

OCD 7 & 8

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

AP-COM/1103/2024

INDRANI SARANGI
VS
RELIANCE PROJECTS AND PROPERTY MANAGEMENT
SERVICES LIMITED AND ANR.

WITH
AP-COM/1050/2024
RELIANCE PROJECTS AND PROPERTY MANAGEMENT
SERVICES LTD. AND ANR.
VS
INDRANI SARANGI

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th January, 2025.

Appearance:
Mr. Siddharth Shroff, Adv.
...for the petitioner in AP-COM/1103/2024 &
for the respondent in AP-COM/1050/2024

Mr. V.V.V. Sastry, Adv.
Ms. Kushi Gupta, Adv.
... for the respondent in AP-COM/1103/2024 &
for the petitioner in AP-COM/1050/2024

The Court: AP-COM/1050/2024:

This is an application under Section 14 of the Arbitration and Conciliation Act, 1996 for termination of the mandate of the learned Arbitrator. Mr. Debashis Bose, IAS (Retired) was unilaterally appointed by the respondent. The law has

been well settled, that unilateral appointment of a learned Arbitrator was contrary to the principle of party autonomy. One of the parties to the agreement, does not get an opportunity to nominate the person, who shall adjudicate the dispute between the parties.

Under such circumstances, the learned Arbitrator, who was unilaterally appointed by the respondent, has become de jure unable to perform. Reference is made to the decision of Perkins Eastman Architects DPC and Another vs. HSCC (India) Limited reported at (2020) 20 SCC 760.

Under such circumstances, AP-COM/1050/2024 is allowed. The Court holds that the mandate of the learned Arbitrator terminates on account of unilateral appointment.

AP-COM/1103/2024:

This is an application for appointment of a learned Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, on the strength of Clause 7(g) of the Lease Agreement dated 17th July, 2003 and Clause 4 of the Amendment Agreement dated 10th November, 2014. This application has been filed as the respondent prayed for termination of mandate by filing AP COM/1050/2024. Although the respondents have objection with regard to the arbitrability of the dispute and also on the ground that the respondents were not signatories to any agreement which contained an arbitration clause, this Court finds that the invocation of the arbitration clause, upon issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996, was not proper.

The letter dated October 1, 2024, which has been relied upon by the petitioner, is a letter written to the learned Arbitrator, who was appointed

unilaterally by the petitioner. Copy thereof was marked to the respondents for acceptance/denial within seven days or the same would be deemed to be a notice under Section 21 of the Arbitration and Conciliation Act.

In the application for appointment of the Arbitrator in Paragraph 6(p), the petitioner relies on the letter written to the learned Arbitrator, who was appointed unilaterally, as the notice invoking arbitration. Although, reliance has been placed on another communication dated September 19, 2024 in support of the contention that the same is a notice invoking arbitration, I find that the same is a reminder letter to the authorized signatories of the respondent no.1, alleging false statement etc. The said letter is a notice to the signatories of the respondent no.1 company, alleging that proceedings under Civil and Criminal laws as also reference to arbitration, attachment of bank account etc. would be initiated by the petitioner.

This, in my view, cannot be treated as a notice invoking arbitration. Moreover, the petitioner herself did not treat the same to be a notice invoking arbitration. Rather, she has referred to a document, which is a letter written to the Sole Arbitrator, calling upon him to arbitrate upon the dispute, as the notice invoking arbitration.

Under such circumstances, this Court is of the view that a proper notice should be issued by the petitioner before approaching this Court.

The other objection of Mr. Sastry is not taken into consideration at this stage, in view of the above observations. Those objections will be taken care of at the appropriate stage.

The application is disposed of.

This order will not prevent the petitioner from filing afresh or from taking steps that may be available in law.

(SHAMPA SARKAR, J.)