

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 08.04.2026
DELIVERED ON: 27.04.2026**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 1007 OF 2025

**MIPL DRAIPL JV
VERSUS**

EASTERN RAILWAY

Ms. Debanjana De, Adv.

..... for the petitioner

**Mr. Sukanta Ghosh, Adv.
Mr. Arabinda Sen, Adv.
Mr. Rohan Chamria, Adv.**

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The present petition has been preferred by the Petitioner under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the learned Sole Arbitrator and appointment of a substitute arbitrator, in view of the fact that the learned Sole Arbitrator, Hon'ble Mr. Justice Tapan Kumar Dutt (Retd.), by his communication dated 19.06.2025, has withdrawn from the arbitral proceedings and has thereby been released from his mandate.
- 2.** The brief facts giving rise to the present petition are set out herein below:
- 3.** The Petitioner is a joint venture constituted between Maxout Infrastructure Pvt. Ltd. and Dineshchandra R. Aggarwal Pvt. Ltd. pursuant to a Joint Venture Agreement dated 15.07.2012. The Respondent, upon the Petitioner being declared the lowest bidder, awarded the work vide Memorandum of

Agreement dated 05.09.2013 for construction of Composite Girder Bridge No. 123 (24 spans of 15.24 metres over River Mayurakshi) and Bridge No. 125 (3 spans of 16.5 metres), including RCC bored cast-in-situ piles, retaining walls, protective works, and other ancillary works, in connection with the construction of the third railway line from Sainthia to Tarapith in the Howrah Division of Eastern Railway.

4. Disputes arose between the parties during the execution of the aforesaid works, culminating in termination of the contract by the Respondent vide letter dated 08.08.2017. Thereafter, the Petitioner invoked the arbitration clause contained in the agreement by issuing a notice dated 06.02.2019 under Section 21 of the Arbitration and Conciliation Act, 1996.
5. As the parties failed to arrive at a consensus regarding the appointment of an arbitrator, the Petitioner approached this Hon'ble Court by filing AP No. 81/2020. This Hon'ble Court, vide order dated 04.02.2021, was pleased to appoint Hon'ble Mr. Justice Tapan Kumar Dutt (Retd.) as the Sole Arbitrator to adjudicate the disputes between the parties.
6. Owing to financial constraints and attendant circumstances, the Petitioner could not immediately take steps to operationalize the arbitral proceedings or communicate the aforesaid order to the learned Sole Arbitrator. Subsequently, in the year 2025, the Petitioner, under a mistaken understanding of certain facts, preferred a petition being AP (Com) No. 381/2025 challenging the mandate of the Arbitral Tribunal. Upon realizing the error, the said petition was withdrawn vide order dated 14.05.2025.
7. Thereafter, the Petitioner, with the intent to proceed with the arbitration, communicated the order dated 04.02.2021 to the learned Sole Arbitrator vide letter dated 11.06.2025. However, upon receipt thereof, the learned

Sole Arbitrator, by communication dated 19.06.2025, was pleased to withdraw from acting as the Sole Arbitrator.

8. In view of the aforesaid withdrawal, the mandate of the learned Sole Arbitrator stands terminated within the meaning of Section 14 of the Arbitration and Conciliation Act, 1996. Consequently, in terms of Section 15 of the Act, the Petitioner has approached this Hon'ble Court seeking appointment of a substitute arbitrator to adjudicate the disputes between the parties.

Submissions on behalf of the Petitioner

9. Ms. Debanjana De, learned Counsel for the Petitioner submitted that the present petition under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 is maintainable and arises in peculiar but bona fide circumstances warranting interference of this Court. This Hon'ble Court, vide order dated 04.02.2021, was pleased to appoint Hon'ble Mr. Justice Tapan Kumar Dutt (Retd.) as the learned Sole Arbitrator to adjudicate the disputes between the parties. The appointment having been made by this Court, the arbitral process stood duly constituted.
10. In the year 2025, under a mistaken understanding of certain facts, the petitioner approached this Court by filing a petition challenging the mandate of the learned Arbitrator. Upon realizing the error, the said petition was withdrawn. This conduct, it is submitted, clearly demonstrates that the Petitioner at all material times intended to pursue arbitration and had not abandoned the proceedings. Thereafter, the Petitioner, with the bona fide intention of proceeding with arbitration, communicated the order dated 04.02.2021 to the learned Sole Arbitrator on 11.06.2025. However, upon receipt thereof, the learned Arbitrator, vide communication dated

19.06.2025, withdrew from acting as the Sole Arbitrator. Consequently, the mandate of the learned Arbitrator stands terminated within the meaning of Section 14 of the Act.

11. Learned Counsel further submitted that, due to genuine financial constraints and attendant circumstances, the Petitioner was unable to immediately communicate the said order to the learned Arbitrator or take steps to operationalize the arbitral proceedings. The said delay, was neither deliberate nor indicative of any intention to abandon the arbitral remedy.
12. In such circumstances, it is submitted that the present case squarely attracts the provisions of Sections 14 and 15 of the Act, which contemplate termination of mandate and substitution of an arbitrator so as to ensure continuity of the arbitral process. The statutory framework is intended to facilitate adjudication of disputes on merits and not to defeat the same on account of procedural delays. It is further submitted that the delay in the present case does not amount to abandonment of arbitration. The Petitioner has, through its conduct, consistently evinced its intention to pursue the arbitral remedy, and the intervening circumstances sufficiently explain the delay. No prejudice whatsoever has been caused to the Respondent.
13. In view of the aforesaid, it is prayed that this Hon'ble Court may be pleased to terminate the mandate of the learned Sole Arbitrator and appoint a substitute arbitrator in accordance with Section 15 of the Arbitration and Conciliation Act, 1996.

Submission on behalf of the Respondent

14. Mr. Sukanta Ghosh, learned Counsel for the Respondent submits that the present petition under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 is wholly misconceived, barred by limitation, and

liable to be dismissed in limine. Learned Counsel points out that this Court, vide order dated 04.02.2021, appointed Mr. Justice Tapan Kumar Dutt (Retd.) as the Sole Arbitrator to adjudicate the disputes. However, the Petitioner failed to take any steps whatsoever to operationalize the arbitral proceedings for an inordinate period of more than four years. The Petitioner did not even communicate the said order to the learned Arbitrator until 11.06.2025.

- 15.** Learned Counsel for the Respondent submits that such prolonged and unexplained inaction clearly demonstrates gross negligence and lack of diligence on the part of the Petitioner. The explanation sought to be offered, namely “financial constraints”, is vague, unsupported, and wholly insufficient to justify a delay of this magnitude. No material particulars or contemporaneous record have been placed on record to substantiate the said plea. It is further submitted that the Petitioner’s conduct unmistakably establishes that the arbitral proceedings were effectively abandoned. Mere appointment of an arbitrator does not, by itself, sustain the arbitral process in perpetuity in the absence of any steps being taken to prosecute the same.
- 16.** It is the contention of the Respondent that the present petition is also barred by limitation. In terms of Section 43 of the Arbitration and Conciliation Act, 1996, the provisions of the Limitation Act, 1963 apply to arbitral proceedings as they apply to proceedings before a court. The present petition, being an application for relief not otherwise specifically provided for, is governed by Article 137 of the Limitation Act, which prescribes a limitation period of three years. The right to seek appropriate relief, if any, arose when the Petitioner failed to act upon the order dated

04.02.2021 within a reasonable time. The Petitioner, having remained completely inactive for over four years, cannot now seek to revive a stale and abandoned claim by invoking Sections 14 and 15 of the Act. It is submitted that the subsequent filing of a petition in the year 2025, admittedly based on “wrong information”, does not cure the fundamental defect of prolonged inaction. On the contrary, it further reflects the casual and negligent approach adopted by the Petitioner in prosecuting the matter.

17. The Respondent further submits that Sections 14 and 15 of the Act cannot be invoked as a device to revive proceedings that have lapsed on account of abandonment and inordinate delay. The statutory scheme contemplates substitution in a live and subsisting arbitration, and not resurrection of proceedings that have been allowed to become dormant for years together. In the present case, the Petitioner has failed to demonstrate any continuity of intention to pursue arbitration. The conduct of the Petitioner disentitles it from any discretionary relief from this Hon’ble Court.
18. In view of the aforesaid, it is respectfully submitted that the present petition is barred by limitation, suffers from gross delay and laches, and is liable to be dismissed as the Petitioner has, by its conduct, abandoned the arbitral proceedings.

Legal Analysis.

19. This Court has heard the arguments advanced by the learned counsel for the parties and has carefully examined the material placed on record.
20. The principal objection raised by the Respondent pertains to the inordinate delay of approximately four years in intimating the learned Sole Arbitrator of his appointment pursuant to the order dated 04.02.2021. It is contended

that such delay is unexplained, not liable to be condoned, and indicative of abandonment of the arbitral proceedings. It is further urged that, in view of Section 43 of the Arbitration and Conciliation Act, 1996 read with Article 137 of the Limitation Act, 1963, the present petition is barred by limitation.

- 21.** Per contra, the Petitioner submits that the delay was occasioned by financial constraints and certain intervening circumstances, and that there was no intention to abandon the arbitral proceedings. It is further submitted that the withdrawal of the learned Arbitrator on 19.06.2025 necessitated the filing of the present petition under Sections 14 and 15 of the Act for appointment of a substitute arbitrator.
- 22.** At the outset, this Court notes that there has indeed been a substantial delay on the part of the Petitioner in communicating the order of appointment to the learned Arbitrator. The explanation offered for such delay is neither entirely satisfactory nor supported by detailed particulars. Ordinarily, such prolonged inaction would weigh against the grant of discretionary relief. However, the matter cannot be examined in isolation and must be considered in the overall factual and legal context.
- 23.** It is not in dispute that the arbitration agreement between the parties was duly invoked by the Petitioner within the prescribed period of limitation, and that this Court, in exercise of its jurisdiction, had appointed the learned Sole Arbitrator vide order dated 04.02.2021. Thus, the arbitral process had been validly set in motion. Further, the inability to proceed has arisen not on account of any adjudication on merits or termination for default, but solely due to the subsequent withdrawal of the learned Arbitrator from his mandate on 19.06.2025. Had the learned Arbitrator continued, there would have been no impediment in proceeding with the

arbitration. The present petition, therefore, arises in the context of Sections 14 and 15 of the Act, which contemplate termination of mandate and substitution of an arbitrator so as to ensure continuity of the arbitral process.

- 24.** The question that arises is whether such delay, by itself, amounts to abandonment of the arbitral proceedings. The Hon'ble Supreme Court in ***Dani Wooltex Corporation Vs Sheil Properties Pvt. Ltd.*** reported as **2024 (7) SCC 1**, examined the concept of abandonment of arbitral proceedings and observed as under:

"The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, per se, will not amount to the abandonment of the claim.

- 25.** In law, abandonment cannot be readily inferred from mere inaction or delay. It must be established that there was a clear, unequivocal, and conscious intention on the part of the party to relinquish the arbitral remedy. The test is not merely of lapse of time, but of intention as discernible from the conduct of the party. In the present case, although

there has been considerable delay, the conduct of the Petitioner does not disclose any such intention. On the contrary, the Petitioner approached this Hon'ble Court in the year 2025, albeit under a mistaken understanding, and subsequently withdrew the said petition. Thereafter, steps were taken to communicate the order of appointment to the learned Arbitrator. These actions, though belated, indicate a continuing intention to pursue arbitration. Accordingly, the delay in the present case cannot be construed as abandonment of the arbitral proceedings.

- 26.** This Court now turns to the objection based on limitation. Section 43 of the Arbitration and Conciliation Act, 1996 makes the provisions of the Limitation Act applicable to arbitral proceedings. However, such application must be understood in the context of the nature of the relief sought. The present petition is not one for enforcement of a substantive claim, but for termination of mandate and substitution of an arbitrator under Sections 14 and 15 of the Act. In such circumstances, the right to apply arises not from the date of appointment of the arbitrator, but from the point at which the mandate becomes incapable of being performed. In the present case, the cause of action arose only upon the withdrawal of the learned Arbitrator on 19.06.2025. Even assuming that Article 137 applies, the period of limitation would commence from the said date, and not from the earlier date of appointment in 2021. The present petition, having been filed within a reasonable time thereafter, cannot be held to be barred by limitation. The provisions of Section 43 and Article 137 cannot be applied in a rigid or mechanical manner so as to defeat the object of arbitration, particularly where the statutory scheme under Sections 14 and 15 is designed to ensure continuity of the arbitral process.

- 27.** This Court is also mindful of the fact that arbitration is an efficacious alternative dispute resolution mechanism, and that procedural lapses ought not to defeat substantive rights, especially where disputes between the parties remain unresolved. Denial of substitution in the present case would effectively foreclose the Petitioner's remedy despite the existence of a valid arbitration agreement.
- 28.** The Hon'ble Supreme Court has consistently held that where the mandate of an arbitrator terminates, the Court must step in to ensure continuity of the arbitral process through appointment of a substitute arbitrator. The pro-arbitration approach mandates that disputes be resolved on merits rather than being defeated on technical grounds.
- 29.** In view of the aforesaid, this Court is of the considered opinion that the ends of justice would be better served by permitting continuation of the arbitral proceedings through appointment of a substitute arbitrator, rather than terminating the same on account of procedural delay.
- 30.** Accordingly, in exercise of powers under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, the mandate of the learned Sole Arbitrator stands terminated, and it is deemed appropriate to appoint a substitute arbitrator to adjudicate the disputes between the parties.
- 31.** In the aforesaid circumstances, Justice Pranab Kumar Chattopadhyay (Retd.), a former Judge, of this Court is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The learned Sole Arbitrator shall proceed with the arbitral proceedings from the stage at which they stood prior to the withdrawal of the earlier Arbitrator, in accordance with law.

- 32.** The learned Sole Arbitrator shall, prior to entering upon the reference, make the necessary disclosure in terms of Section 12(1) of the Arbitration and Conciliation Act, 1996, read with the Fifth and Seventh Schedules thereto, and shall be at liberty to fix his remuneration in accordance with law.
- 33.** With the aforesaid directions, the present petition stands allowed.

(GAURANG KANTH, J.)

Sakil Amed P.A.

