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ORDER SHEET
A.P. No. 864 OF 2018

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

RAHEE-ALLIED [JV] & ORS.

Versus

THE UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE ARINDAM SINHA

Date : 27th February, 2019.

Appearance:

Mr. Nirmalya Dasgupta, Adv.

Ms. P. Dhar, Adv.

... for petitioner.

Ms. Aparna Banerjee, Adv.

... for respondents.

The Court : This arbitration petition carries prayers for termination of mandate of arbitral Tribunal, substitute arbitrator or arbitrators be appointed as necessary measure taken by this Court and consequential prayers.

Mr. Dasgupta, learned Advocate appears on behalf of petitioner contractor and submits, arbitral Tribunal was appointed way back in year 2015 after which presiding arbitrator stood transferred and no proceedings were held. On 18th January, 2018 arbitral Tribunal was reconstituted. His client filed statement of claim eleven days therefrom on obtaining three days extension. Respondent then obtained consecutive adjournments. He refers to minutes of arbitration meeting held on 5th October, 2018 to demonstrate, on that date respondent had filed 'draft' counter statement on submission final will be submitted by 15th October, 2018. Even if commencement of the reference is taken from reconstitution of Tribunal as on 18th January, 2018, time provided to make and publish award having had expired and there being no consent of his client to

extend the time, mandate of the Tribunal stands terminated on it having become de jure unable to perform its functions, as within time it had, failed to act without undue delay. He relies on judgment of Supreme Court in **Union of India Vs. Uttar Pradesh State Bridge Corporation Limited** reported in (2015) 2 SCC 52, paragraphs 17 to 20 to urge appointment of arbitrator by this Court by 'default procedure'.

Ms. Banerjee, learned Advocate appears on behalf of respondents. She submits, provisions in Arbitration and Conciliation Act, 1996 as lastly amended cannot be invoked to adjudicate this petition. She relies on judgment of Supreme Court in, inter alia, **Civil Appeal 11824 of 2018 (SP Singla Constructions Pvt. Ltd. Vs. State of Himachal Pradesh and Another)**, to paragraphs 20 to 22. Said Court in paragraph 22 said, inter alia, as follows:-

".....As discussed earlier, in this case, the agreement between the parties is dated 19.12.2006 and the relationship between the parties are governed by the general conditions of the contract dated 19.12.2006, the provisions of the Amendment Act, 2015 cannot be invoked."

Court has ascertained from petitioner that it accepted reconstitution of the Tribunal. Fact is time provided by inserted amendment section 29A is twelve months from date of arbitral Tribunal entering upon reference, has been consumed by reconstituted Tribunal. Parties or atleast petitioner has not consented for extension of time for further period. Petitioner, a party in the reference, has applied for termination of mandate.

Respondents seek to resist adjudication in favour of petitioner upon reliance on **SP Singla Constructions** (supra). Facts in that case were, the private party did not participate or avoided participating in the reference. Supreme Court on finding such, said, in interest of justice, in its considered view, opportunity is to be afforded to appellant to go before departmental

arbitrator. Supreme Court said so in spite of stating consciousness that after amendment Act, 2015 there cannot be a departmental arbitrator. In doing justice on fact situation before said Court, where private party had obstructed departmental arbitrator from proceeding with the reference and departmental arbitrator had been compelled to terminate the proceeding, order of termination was set aside on observations made.

Facts in this case distinguish it from application of **SP Singla Constructions Pvt. Ltd.**(supra). Petitioner had with expedition file its statement of claim. Respondent obtained from departmental arbitral Tribunal major part of time available for reference, to file its counter statement, first file in draft form. Acceptance of draft counter statement is procedure adopted by arbitral Tribunal unknown to law. Court has ascertained from parties, particularly respondents, that Conditions of Contract does not provide for filing draft pleadings. These facts invite application of 'default procedure' as can be resorted to on declaration of law in **Uttar Pradesh State Bridge Corporation** (supra).

For reasons aforesaid this Court declares mandate of arbitral tribunal to have terminated. Retired Hon'ble Justice Ashim Kumar Banerjee is appointed substitute arbitrator. Appointee will fix his remuneration with reference to IV Schedule in the Act. Parties will bear all costs of arbitration in equal share.

Arbitration petition is disposed of.

(ARINDAM SINHA, J.)