
(2019) 05 DEL CK 0321

In the Delhi High Court

Case No : Original Miscellaneous Petition (T) (COMM.) No. 45, 46, 47, 48 Of 2019, Miscellaneous Application No. 6998 Of 2019

Avneet Goyal & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 11, 12(5), 13, 14, 15(2), 29A

Citation : (2019) 4 R.A.J. 521 : (2019) 3 ArbLR 352

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Jai Sahai Endlaw, Gaurav Aggarwal, Shivansh Soni, Deepika Mishra, Rahul Sharma, C.K. Bhatt, Pradeep Jha

Final Decision : Dismissed

Judgement

OMP (T) (COMM) 45/2019, OMP (T) (COMM) 46/2019, OMP (T) (COMM) 47/2019, OMP (T) (COMM) 48/2019

18.02.2019, 22.02.2019 & 25.02.2019, 21.02.2019, 26.02.2019

Mr. Y.K. Singh, it is stated that his mandate stood terminated requiring the respondent to appoint a substitute Arbitrator. Exercising its powers under",,,

Section 15(2) of the Act, the respondent appointed the present Arbitrator by letters mentioned hereinabove. The Arbitrator has already entered upon",,,

the reference and has issued notice to the parties for filing of their pleadings as also for their appearance. Once the substitute Arbitrator has already,,,

been appointed, unless such Arbitrator is ineligible under Section 12 (5) of the Act read with the Seventh Schedule to the Act, it would not be open to",,,

this Court to interfere with such appointment. If the petitioner(s) have any grievance on the appointment of the Arbitrator as to the Arbitrator's",,,

independence or impartiality, their remedy has to be in form of an application under Section 13 of the Act before the Arbitrator himself. This is so held",,,

by the Supreme Court in HRD Corporation vs. GAIL (India) Ltd. (2018) 12 SCC 471.,,,

16. The submission of the counsel for the petitioner(s) that almost more than one year has lapsed since the passing of the orders in the earlier round of,,,

petitions and therefore, the mandate of the Arbitrator, in any case, would have terminated, is again of no relevance to the present petitions. Admittedly",,,

the present Arbitrator has entered reference only on the dates hereinabove mentioned. Even otherwise, under Section 29A of the Act, on the expiry of",,,

the period mentioned therein, it is the mandate of the Arbitrator that terminates and not the arbitration proceedings themselves. The substitute",,,

Arbitrator has already been appointed by the respondent, therefore, the provision of Section 29A of the Act can come to no avail of the petitioner(s).",,,

17. As far as the submission of the petitioner(s) that allowing the respondents to appoint an Arbitrator at this stage would be granting benefit to the,,,

respondents of their own wrong, the same again has no force. As noted hereinabove, it is not the case of the petitioner(s) that the petitioner(s) have",,,

also taken any steps to expedite the arbitration proceedings. If anything, they are equally guilty of the delay in the arbitration proceedings.",,,

18. The submission of the counsel for the petitioner(s) that the Arbitrator so appointed has been appointed in other 115 cases also, may be relevant to",,,

be considered by the Arbitrator himself in terms of the Fifth Schedule to the Act and cannot be a ground to terminate his mandate in the present,,,

proceedings.,,,

19. Reliance of the petitioner on the order dated 11.01.2019 passed in OMP(T) (Comm.) No.131/2018 is also of no avail inasmuch as in the said case",,,

the respondent had failed to appoint an Arbitrator before filing of the petition. In those circumstances, this Court relying upon the judgment in Datar",,,

Switchgears Ltd. vs. Tata Finance Ltd. & Anr. (2000) 8 SCC 151, held that the respondent had forfeited its right to appoint an Arbitrator and",,,

proceeded to appoint an Arbitrator. In the present case, the respondent has appointed an Arbitrator before filing of the present petitions and infact the",,,

present petitions are challenging such appointment.,,,

20. In view of the above, while reserving the liberty of the petitioner(s) to

challenge the appointment of the Arbitrator in accordance with law, the",,,
present petitions are dismissed.,,,