



\$~50 & 64 (common order)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (T) (COMM.) 91/2023**

ATS INFRASTRUCTURE LTD AND ANR.

..... Petitioners

Through: Mr.Kartik Nayar, Mr.Krish Kalra,
Advocates.

versus

RASBEHARI TRADERS

..... Respondent

Through: Mr.Apoorv Khatar, Ms.Rashi
Rampal, Advocates.

+ **O.M.P. (T) (COMM.) 92/2023 & I.A.Nos.18864-66/2023**

ALMOND INFRABUILD PRIVATE LIMITED AND ORS.

..... Petitioners

Through: Mr.Kartik Nayar, Mr.Krish Kalra,
Advocates.

versus

DALMIA FAMILY OFFICE TRUST AND ANR.

..... Respondents

Through: Mr.Ajay Bhargava, Mr.Aseem
Chaturvedi, Ms.Raddhika Khanna,
Ms.Phalguni Nigam, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **26.09.2023**

I.A.Nos.18845-46/2023 in O.M.P. (T) (COMM.) 91/2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.



O.M.P. (T) (COMM.) 91/2023 & I.A.18844/2023;
O.M.P. (T) (COMM.) 92/2023 & I.A.Nos.18864-66/2023

3. These petitions are filed by the petitioners under Section 14(1) read with Section 15(2) and 11(6) of the Arbitration and Conciliation Act.

4. It is submitted the mandate of the learned sole arbitrator, Mr. Justice Swatanter Kumar (Retd.) has come to an end and stood terminated on 01.03.2023 or in any event by 31.08.2023. It is stated the arbitration proceedings being conducted by the learned sole arbitrator as on date are without any force of law/jurisdiction and as such the same are not recognised.

5. It is submitted vide an order dated 08.01.2021 a batch of petitions under Section 11 of Arbitration and Conciliation Act were filed by ATS Group and promoters of ATS Group of companies against Dalmia, pursuant to mutual consent of parties to appoint Hon'ble Mr. Justice Swatanter Kumar (Retd.) as a sole arbitrator to adjudicate the disputes between the parties.

6. It is submitted the said arbitration stood terminated on 31.08.2023 and that no application under Section 29A(4) of Arbitration and Conciliation Act was ever moved during the continuation of the arbitration proceedings by the respondent and as such the learned arbitrator has lost the jurisdiction over the matter and hence his arbitration need to be terminated. Reference was made to *Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Limited* in A.P.328/2023 more specifically to its para nos.17, 23 to 26 wherein vide order dated 06.09.2023 it was held the Court cannot extend the mandate of learned Arbitrator under Section 29A of Arbitration and Conciliation Act, once it is terminated.

7. It is submitted as no application for extension was moved *prior to the*



termination of the mandate, now such a prayer cannot be made to extend the mandate suo-moto and in the absence of consent of one of the parties. Reference is also made to section 29A(4) of Arbitration and Conciliation Act, as under:

“29A. Time limit for arbitral award.—

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

*Provided further that **where an application under sub-section (5) is pending**, the mandate of the arbitrator shall continue till the disposal of the said application:*

8. The learned counsel for the respondent also referred to *Tata Sons Private Limited vs. Siva Industries and Holding Limited and Others* (2023) 5 SCC 421 to say sub-section (3) of Section 29A empowers the parties to extend the period specified in sub-section (1) of Section 29A for making an award by a further period not exceeding six months, thereafter if the award is not made within the period which is specified in sub-section (1) or the extended period specified in Sub-Section (3), the mandate of the learned arbitrator shall terminate *unless the Court has extended the period either prior to or after the expiry of the period so specified.*

9. There is no doubt to the law laid down by the Hon’ble Supreme Court in *Tata Sons* (supra) but the question raised by the learned counsel for the petitioner also needs to be examined in detail whether *an application ought to be moved by the parties under Section 29A(4) during the course of mandate of the learned arbitrator or can be moved even later.*



10. The learned counsel for the respondent seeks time to file reply. Be filed within two weeks from today with an advance copy to the learned counsel for the petitioner.

11. List on 30.10.2023 and in the meanwhile the learned sole arbitrator is requested not to proceed with the arbitral proceedings.

YOGESH KHANNA, J.

SEPTEMBER 26, 2023

DU