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

Judgment pronounced on: 01.12.2023

+ **O.M.P. (MISC.) 15/2023**

IQBAL SINGH

..... Petitioner

Through: Mr. Aditya Bakshi, Mr. Utsav Garg
and Mr. Pushkar Khanna, Advs.

versus

NARESH KUMAR

..... Respondent

Through: Mr. Anurag Ojha, Mr. Gautam
Barnwal, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed under Section 29A(4) of the Arbitration and Conciliation Act, 1996, (the "A&C Act") seeking extension of time for completion of the arbitral proceedings and making of the arbitral award.

2. The facts relevant for the disposal of the present petition are that in July 2010, an arbitration commenced between the petitioner and the predecessor in interest of the respondent, resulting in an award dated 02.01.2013. The said award was set aside by this Court vide order dated 02.03.2017 passed in OMP 465/2013, recording the no objection of the petitioner, in a challenge made by the respondent. Vide the said order, this Court also appointed a Sole Arbitrator to adjudicate the disputes between the parties. However, the Arbitrator so appointed withdrew from the arbitration,



the Arbitrator thereafter substituted vide order dated 03.05.2017 passed in the said OMP also withdrew from the arbitration, ultimately vide order dated 13.10.2017 passed by this court in OMP 465/2013, the present Sole Arbitrator was substituted/appointed to adjudicate the disputes between the parties.

3. In the arbitration proceedings held on 12.07.2019, the Ld. Arbitrator informed the parties that the period of six months that was mutually extended by the parties, had expired in March, 2019 and the arbitration proceedings in the matter cannot be further held unless the period for rendering the award is extended.

4. In November, 2021, the petitioner filed a petition under Section 29A(4) of the A&C Act before this Court seeking extension of time for completion of the arbitration proceedings. Vide order dated 08.12.2021 passed in O.M.P (MISC.) 5/2021, this Court recorded the consent of the respondent, and allowed the said petition as under:

“1. The present petition under Section 29A(4) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'Act'] seeks an extension of the mandate of the arbitral tribunal to complete the arbitral proceedings and pass the arbitral award.

2. Ms. Tanya Aggarwal, counsel for the Petitioner, states that the mandate of the Arbitrator expired in March, 2019. As per the facts narrated in the application, it appears that on account of settlement talks between the parties, the proceedings could not conclude before the learned Arbitrator. She further states that the arbitral proceedings are presently at the preliminary stage of recording of evidence, and thus, an extension is prayed for.

3. Mr. Shivam Malhotra, learned counsel for the Respondent, states that he has no objection to the relief sought in the present petition. However, he submits that the Petitioner has also filed an application seeking similar relief before the District Court and, further, the proceedings before the Arbitrator have been rendered infructuous in view of certain supervening facts.

4. In view of the above, since there is a consensus between the parties as to extension, the mandate of the learned Arbitrator is extended with effect



from March, 2019 till 30th June, 2022. Further, Petitioner's undertaking is recorded to the effect that he would withdraw the petition filed before the District Court under Section 29A of the Act.

5. All the rights and contentions of the Respondent regarding the plea of arbitration proceedings being render infructuous are left open, to be agitated before the Arbitral Tribunal, if so advised.

6. In view of the above, the petition stands disposed of. The pending application is also disposed of."

5. *Vide* procedural orders dated 11.02.2022 and 12.04.2022, the Ld. Arbitrator noted that the respondent was not seriously participating in the arbitration proceedings, and was delaying the said proceedings. *Vide* procedural order dated 27.06.2022, Ld. Arbitrator noted that no further proceedings can be held after 30.06.2022 unless the period is extended by this Court and deferred the arbitration till the parties obtain an order extending the time for conclusion of the arbitration proceedings.

6. Learned counsel for the petitioner submits that the arbitration proceedings are at the stage of petitioner's/claimant's evidence and suitable extension of time be granted for completion of the arbitration proceedings. It is submitted that Section 29A of the A&C Act is not applicable to the present arbitration since the arbitration proceedings had commenced prior to the insertion of Section 29A in the A&C Act in 2015, and that the present petition is filed by way of abundant caution lest the said issue impacts the enforceability of the award that may be passed. It is further submitted that after passing of the order dated 27.06.2022 by the Ld. Arbitrator, the petitioner went to Kerala for an ayurvedic treatment which continued till October, 2022; thereafter the petitioner had travelled to Australia on 15.10.2022, from where he returned in the month of November, 2022. It is submitted that only in the month of April, 2023, during the meeting between the petitioner and his counsel, the petitioner realised that the application for



extending the mandate of the Ld. Arbitrator had not been filed. It is submitted that thereafter the present petition was filed expeditiously on 26.04.2023.

7. *Per Contra*, learned counsel for the respondent submits that the A&C Act generally provides a period of 12 months to complete arbitration proceedings. However, for filing the first Section 29A petition, the petitioner took 32 months; for filing the current/second Section 29A petition, the petitioner has taken almost one year. It is submitted that the extension of the mandate of an arbitrator should not be allowed where the arbitration proceedings have already consumed a substantial amount of time. In the said regard, reliance has sought to be placed on the judgment of the Bombay High Court in *Fedbank Financial Service Ltd. vs. Narendra H Shelar, through LRs*, 2020 SCC OnLine Bom 5252. It is submitted that the disputes between the parties have been pending since July 2010 and the present arbitration proceedings have been pending since March 2017. In reply filed by the respondent, certain contentions of the merit of disputes have also been made.

8. I have perused the record and heard learned counsel for the parties.

9. The contention of the petitioner that the Section 29A of the A&C is not applicable to the present arbitration proceedings is untenable. The arbitration proceedings in the present case has commenced after coming into force of the Arbitration and Conciliation (Amendment) Act of 2015. The same is evident from the fact that vide order dated 02.03.2017 passed in OMP 465/2013, this Court has appointed a Sole Arbitrator to adjudicate the dispute between the parties; further vide order dated 13.10.2017 passed in the said OMP, the present substitute Sole Arbitrator came to be appointed.



10. In the present case, the extended mandate of the Ld. Arbitrator expired on 30.06.2022 and the present petition has been filed by the petitioner on 23.04.2023 (although first listed on 10.05.2023).

11. In *ATC Telecom Infrastructure (P) Ltd. v. BSNL*, 2023 SCC OnLine Del 7135, this Court has held that a petition under Section 29A(4) of the A&C Act can be filed either before expiry of the period referred to under Section 29A(1) or Section 29A(3) of the A&C Act or even thereafter. The relevant extracts of the said judgement are as under:

“16. No doubt, the purpose of Section 29A of the A&C Act is to prescribe and regulate the timelines for completion of the arbitral proceedings; however, a perusal of Section 29A of the A&C Act itself makes it clear that it does not contemplate any inflexible outer deadline for completion of arbitral proceedings, and affords flexibility to the contracting parties, and also to the Court for extension of the time period in appropriate cases. The purport of Section 29A of the A&C Act was clearly not to tie the hands of the parties or the court, and prevent extension of time even where warranted, simply because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiration of the deadline contemplated under Section 29A(1) or Section 29A(3) of the A&C Act. Had it been intended by the legislature to provide for a blanket prohibition on extension of time after the expiration of the period contemplated under Section 29A(1) or Section 29A(3) of the A&C Act (unless a petition under Section 29A(4) of the A&C Act was filed prior to expiry of the said period), nothing would have been easier than to say so.

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25. Thus, under Section 29A(4) of the A&C Act, the termination of the mandate of the arbitrator(s) is subject to the decision of the Court which may be “either prior or after the expiry” of the specified period. The Court would take a suitable decision upon a petition under Section 29A(4) of the A&C Act being filed. Such a petition can be filed either before expiry of the period referred to under Section 29A(1) or Section 29A(3) of the A&C Act or even thereafter. When the Court has been specifically empowered to grant the requisite extension even after expiry of the specified period, it would not be apposite to read a proscription in the statutory provision to the effect that a petition under Section 29A(4) of the A&C Act [seeking extension of time] must be filed before expiry of the specified period and not thereafter. Such a proscription simply does not exist in the statute. On the contrary, as already noticed, the court has been



empowered to grant an extension even after expiry of the specified period.”

12. The arbitration proceedings between the parties have consumed a substantial amount of time. It is also a fact that the present petition has been filed with some delay. There is no gainsaying that the petitioner has displayed laxity in pursuing the matter.

13. However, since the arbitration proceedings, albeit protracted, have advanced to the stage of adducing of claimant’s evidence, this Court is inclined to grant a suitable time extension to ensure that the elaborate arbitral exercise is not rendered futile, and the arbitration is taken to its logical conclusion.

14. In the aforesaid conspectus, while expressing anguish at the inordinate delay that has taken place in completion of arbitral proceedings, in order to ensure that the elaborate arbitral exercise is not rendered futile, this Court extends the time period for completion of arbitration proceedings and making of the arbitral award till 30.06.2024.

15. Considering that the present arbitration proceedings have been pending since March 2017, the learned Arbitrator is requested to ensure that the arbitration proceedings are concluded within the extended time.

16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case of either party in the arbitration proceedings.

17. The present petition stands allowed, in the above terms.

SACHIN DATTA, J

DECEMBER 01, 2023/hg