



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION (L) NO.18473 OF 2023
WITH
ARBITRATION PETITION NO.13 OF 2023

M/s.Paresh Construction & Foundation Ltd.] .. Petitioner

vs.

Hindustan Petroleum Corp. Ltd.] .. Respondent

Mr.Aliabbas Delhiwala a/w Usha Singh and Anirudh for the Petitioner/
Applicant

Mr.Nikhil Sakhardande, Senior Counsel a/w Pralhad Paranjape,
Shubhra Paranjape and Manish Kelkar for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 26th February, 2024.

P.C.

1] Two proceedings, instituted in the form of Arbitration Petition and Arbitration Application seek distinct reliefs.

Arbitration Petition No.13/2023 is a Petition filed under Section 14(1)(a) and 14(2) read with 15(2) of the Arbitration and Conciliation Act, 1996, seeking substitution of the Arbitrator, since the Arbitrator conducting the proceedings by his communication dated 01.10.2022, has expressed inability to continue with the proceedings, by citing that

he is not in a position to devote sufficient time towards it and the proceedings could not be completed within a period of 12 months.

ARBAPL No.18473/2023 seek extension of the mandate of the Arbitrator by six months to conclude the arbitration proceedings and for declaration of the Award.

2] Heard Mr.Delhiwala, the learned counsel for the Petitioner and the learned senior counsel Mr. Sakhardande, for the Respondent.

The sequence of events, which is not in dispute, reveal that pursuant to the order passed by this Court on 12.04.2018, the Arbitral Tribunal was constituted and upon the Arbitrator entering the reference, the statement of claim was filed on 30.06.2018, whereas, the reply to the claim was filed on 23.08.2018 and considering the time limit for passing of the arbitral Award to be one year, the period of 12 months would come to an end on 23.08.2019.

The Petitioner made an unsuccessful attempt to seek substitution of the Arbitrator by filing an Arbitration Petition in the year 2018, on the alleged ground of impartiality etc., however, this Petition was withdrawn on 16.12.2019.

3] There was no consensus amongst the parties for extending the mandate of the Arbitrator by consent, as permitted under Sub-Section

(3) of Section 29A of the Act of 1996 and as a result, it is the contention of the learned senior counsel for Respondent that the period of one year having expired, the mandate of the Arbitrator has come to an end, and hence the Application seeking substitution is of no consequence.

As against this, the learned counsel for the Petitioner would specifically submit that Sub-Section (4) of Section 29A would permit an Application to be made even prior to or after the expiry of the period as specified in Sub-Section (1) or Sub-Section (3) of Section 29A of the Act of 1996.

4] On consideration of the rival contentions, when the two proceedings are clearly perused, I must specifically focus upon the order passed by the Sole Arbitrator, when he recused himself on 01.10.2022 and in his communication he make a reference to the request of the Petitioner for holding a meeting of the arbitral tribunal and it is worth to note that, under an assumption that the period of limitation got extended in the wake of Covid Pandemic, as per the orders of the Apex Court, in respect of the present arbitral proceedings, the Petitioner repeatedly made request to the Arbitrator on 16.05.2022, 10.06.2022 and 20.07.2022, as regards holding of the arbitral proceedings.

5] Reading of the communication from the Sole Arbitrator, by no chance indicate that the proceedings are over and since this was an impression which was garnered by the parties, that the proceedings are continued, on 01.10.2022, in the wake of the Arbitrator recusing himself, the Petitioner has prayed for substitution of the Arbitrator and by way of abundant precaution in the year 2023, also seek extension of the mandate of the Arbitral Tribunal.

6] It is well understood between the parties as well as the understanding of the Sole Arbitrator to the effect that his mandate continued in the year 2022, and, therefore, in response to the request for conduct of the arbitral proceedings, the Arbitrator expressed that he will no longer be in a position to continue with the proceedings and desire to recuse himself.

7] In these circumstances, if the parties were under an impression that the proceedings are continued, though legally, it did not defect, on expiry of period of one year from entering into the reference, and mandate of the arbitral tribunal stood terminated in terms of Section 29A of the Act of 1996, I do not think that the technical difficulty shall frustrate the object of the proceedings and since the proceedings are continued before the Arbitral Tribunal since 2018 upon the reference

being made by the High Court, I deem it appropriate to grant the Arbitration Petition as well as Arbitration Application, by substituting the Arbitrator, who shall continue the arbitratral proceedings and by extending his mandate, by a further period of one year from today.

para Since the consensus is expressed, Advocate Rohan Savant, whose details are given below, is appointed as substituted Arbitrator, to adjudicate the disputes and differences that have arisen between the applicant and the respondent, and his appointment is subject to following terms and conditions:

Advocate Mr. Rohan Savant

Address : 301, Rustom Building, Veer Nariman Road,
Fort, Mumai - 400 023.

Mobile No. : 98331 26212

Email : rohanranjitsavant@gmail.com

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Prothonotary and Senior Master of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The proceedings shall be held from the stage where the earlier Arbitrator has recused himself and shall be considered to be continuous proceedings for all purposes.

The Sole Arbitrator shall be entitled for the fees as per Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

All rights and contentions of the parties are kept open.

[BHARATI DANGRE, J]