

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/PETN. UNDER ARBITRATION ACT NO. 68 of 2020

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M/S MAGIRSHA INDUSTRIES
Versus
M/S GUJARAT STATE FERTILIZER AND CHEMICALS LIMITED

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Appearance:

RUSHABH H SHAH(7594) for the Petitioner(s) No. 1

GANDHI LAW ASSOCIATES(12275) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

Date : 04/03/2022

ORAL ORDER

- 1.** This application is filed with the prayers to extend the mandate of Arbitral proceedings and to extend the time to make award within a period of 12 months.
- 2.** I have heard arguments of learned advocate Mr. Rushabh H. Shah appearing for the petitioner and Gandhi Law Associates appearing for the respondent.
- 3.** On a reference made by the applicant before the Micro Small and Medium Enterprise Facilitation Council (for short 'MSMEFC') under section 18(3) of the MSME, sole arbitrator was appointed constituting the Arbitral Tribunal and subsequently the Arbitral Tribunal has held its meeting. The period prescribed under the Act namely 12 months commenced from 26.02.2019 and as directed by the Tribunal to both the parties to submit draft issues by 16.03.2019, same has been submitted. An application for adjournment of the matter was filed and Arbitral Tribunal in its sitting held on

08.04.2019 has framed the issues. The proceedings have gone on before the Tribunal and on a submission made by the learned advocate for the respondent on 03.10.2019 to the effect that there are chances of settlement, a request for adjournment was sought for and thereafter the sitting was said to be held and on account of settlement talks having not materialized, the Tribunal informed the parties about the next sitting to be held on 07.01.2020. On account of the pandemic prevailing, then Tribunal adjourned the matter upto 31.03.2020. Thereafter on account of nationwide lock-down, the meetings of the Tribunal could not take place.

4. In the sitting held on 04.07.2020, it was pointed out that 12 months period as envisaged under section 29A(1) was completed in February, 2020 and as such both the parties agreed to seek permission of the Court for extension of the mandate of the Tribunal. Hence this application.

5. Learned advocates appearing for the parties have placed on record order dated 14.09.2018 passed by this Court in Misc. Civil Application (OJ) No. 1 of 2018 in Petition Under Arbitration Act No. 56 of 2016, whereunder the scope and power of this Court to extend the mandate came to be considered, examined, adjudicated and answered as under :

"13. Ordinarily therefore I would have accepted the contention of learned advocate Shri Mehta that the term 'Court' defined in Section 2(1)(e) in the context of the power to extend the mandate of the arbitrator under sub-section (4) of Section 29A would be with the principal Civil Court. However, this plain application of the definition of term 'Court' to Section 29A of the Act poses certain challenges. In this context one may recall that the

definition clause of sub-section (1) of Section 2 begins with the expression "in this part, unless the context otherwise requires". Despite the definition of term 'Court' contained in Section 2(1)(e) as explained by the Supreme Court in above noted judgments, if the context otherwise requires that the said term should be understood differently, so much joint in the play by the statute is not taken away.

14. As is well-known, the arbitration proceedings by appointment of an arbitrator can be triggered in number of ways. It could be an agreed arbitrator appointed by the parties outside the Court, it could be a case of reference to the arbitration by Civil Court in terms of agreement between the parties, it may even be the case of appointment of an arbitrator by the High Court or the Supreme Court in terms of sub-section (4), (5) and (6) of Section 11 of the Act. The provisions of Section 29A and in particular sub-section (1) thereof would apply to arbitral proceedings of all kinds, without any distinction. Thus the mandate of an arbitrator irrespective of the nature of his appointment and the manner in which the arbitral Tribunal is constituted, would come to an end within twelve months from the date of Tribunal enters upon the reference, unless such period is extended by consent of the parties in term of sub-section (3) of Section 29A which could be for a period not exceeding six months. Sub-section (4) of Section 29A, as noted, specifically provides that, if the award is not made within such period, as mentioned in sub-section (1) or within the extended period, if so done, under sub-section (3) the mandate of the arbitrator shall terminate. This is however with the caveat that unless such period either before or after the expiry has been extended by the Court. In terms of sub-section (6) while doing so it would be open for the Court to substitute one or all the arbitrators who would carry on the proceedings from the stage they had reached previously."

6. Learned advocates appearing for the parties are ad-

idem on the above-said issue. However, issue relating to power of this Court to extend the mandate, insofar as the references made by MSME is seriously disputed by respondent counsel. Having regard to the fact that sub-section (3) of section 18 of MSME Act, 2006 that the provision of Arbitration and Conciliation Act, 1996 (Act 26 of 1996) shall apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of the Act.

7. This Court is of the considered view that even in respect of the references made by MSME, the provisions of Arbitration and Conciliation Act, 1996 would be applicable and thereby this Court is empowered under Section 29A to extend the mandate where the period prescribed under the Act for concluding the arbitration proceedings has expired.

8. In the instant case, as already noticed hereinabove, the arbitration proceedings having commenced by the Arbitral Tribunal, for the reasons set out in its proceedings, was adjourned from time to time and from the month of March, 2020, the Arbitral Tribunal could not hold sittings due to nationwide lock-down and as such reason for extension of time sought for deserves to be accepted and accordingly it is accepted. In other words, the prayer sought for in the application deserves to be granted.

9. Hence, the following

ORDER

(i) IAAP No. 68 of 2020 is allowed.

(ii) Tribunal is granted extension of time namely 12 months from the date of expiry and it is made clear that the period during which this Court and the Hon'ble Apex Court had extended the period of limitation would also stand excluded for the purposes of computation of 12 months period.

AMAR SINGH

(ARAVIND KUMAR,CJ)

