



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (LODGING) NO. 28255 OF 2023

Nikhil H. Malkan & Ors.

...Petitioners

Versus

Standard Chartered Investment and
Loans (India) Limited

...Respondent

* * *

- Mr. Firoz Bharucha i/b Mr. Abhhishek Bhaduri, for Petitioners.
- Mr. S. M. Algaus, Mr. Murtaza Kachwalla, Mr. Palash Moolchandani i/b Argus Partners, for Respondent.

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CORAM : MANISH PITALE, J.

DATE : 30th NOVEMBER, 2023.

ORDER :

1. By this petition filed under Section 29A of the Arbitration and Conciliation Act, 1996, the Petitioners are seeking extension of mandate of the learned Arbitrator. The Respondent has appeared through Counsel and the present petition is opposed on a point of law. It is contended that since the present petition was filed after the mandate of the learned Arbitrator had expired, as a matter of law, this Court under Section 29A(4) of the aforesaid Act, cannot entertain the present petition.

2. Before considering the rival submissions on the aforesaid point of law, it would be appropriate to briefly refer to the relevant facts. In the present case, the admitted position is that the pleadings were completed on 07th February, 2022 and accordingly, the 12

months period expired on 06th February, 2023. As per Section 29A(3) of the said Act, the parties by consent extended the mandate for a further period of 6 months, as a consequence of which, the mandate of the learned Arbitrator stood extended till 06th August, 2023.

3. It is also an admitted position that even after expiry of the mandate of the learned Arbitrator on 06th August, 2023, since the proceedings were at the stage of final hearing, the sessions for final hearing commenced from 11th September, 2023. The final hearing sessions were conducted on 11th September, 2023, 13th September, 2023, 29th September, 2023 and 12th October, 2023. When the proceedings were at the stage of the Petitioners (Original Claimants) arguing in rejoinder, it appears an objection was raised on behalf of the Respondent on the ground that the mandate of the learned Arbitrator had expired.

4. It is in this backdrop that the present petition came to be filed. It is also an admitted position that while the mandate of the learned Arbitrator expired on 06th August, 2023, the present petition came to be filed on 10th October, 2023, which was after the mandate had already expired.

5. Since the learned Counsel appearing for the Respondent

questioned the very maintainability of the petition and relied upon a judgment of the Calcutta High Court, as noted in the order dated 23rd October, 2023, this Court deems it appropriate to first consider the said objection. The learned Counsel for the Respondent placed reliance on judgment of the Calcutta High Court in the case of *Rohan Builders (India) Private Limited Vs. Berger Paints India Limited* (order dated 06th September, 2023 passed in A.P. 328 of 2023). He fairly brought to the notice of this Court that the Supreme Court issued notice for final disposal in Special Leave Petition (Civil) No. 23320 of 2023, whereby the said judgment of the Calcutta High Court has been challenged. He further fairly brought to the notice of this Court that in a subsequent petition filed before the Supreme Court in the matter of *Vrindavan Advisory Services LLP Vs. Deep Shambhulal Bhanushali* (Special Leave Petition (Civil) No. 24489 of 2023), on 06th November, 2023, while issuing notice in the said petition and tagging the same along with the earlier Special Leave Petition, pending before the Supreme Court, it was specifically directed that there shall be stay of the impugned judgment of the Calcutta High Court. Thus, it was brought to the notice of this Court that as on today the Calcutta High Court judgment has been stayed.

6. Nonetheless, the learned Counsel appearing for the Respondent further relied upon a judgment of the Division Bench of

the Patna High Court in the case of *South Bihar Power Distribution Company Limited Vs. Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956*¹, particularly paragraph no. 88 thereof. He submits that the reasoning adopted by the Division Bench of the Patna High Court was similar to the one adopted by the Calcutta High Court in the aforementioned judgments. He submitted that the said interpretation and position of law may be considered by this Court while determining as to whether the present petition can be entertained under Section 29A(4) of the said Act.

7. On the other hand, learned Counsel appearing for the Petitioners relied upon judgment of the Delhi High Court in the case of *ATC Telecom Infrastructure Private Limited Vs. Bharat Sanchar Nigam Limited* [Judgment and order dated 06th November, 2023, passed in O.M.P. (Misc.) (Comm.) 466/2023 and O.M.P. (Misc.) (Comm.) 467/2023]. Apart from this, he submitted that a bare reading of the relevant provision i.e. Section 29A(4) of the said Act would show that the view adopted by the Delhi High Court ought to be preferred by this Court, as compared to the opinions of the Calcutta High Court and the Patna High Court. It was submitted that the interpretation given by the Delhi High Court was based on a correct interpretation of the statute and that therefore, there was no question

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of holding that the present petition could not be entertained merely because it was filed after the mandate of the learned Arbitrator had expired.

8. Apart from this, the learned Counsel for the Petitioners invited attention of this Court to Exhibit “E” filed alongwith the petition, which is a copy of minutes of meeting held on 12th April, 2023, before the learned Arbitrator. It was recorded in paragraph no. 5 of the said minutes of meeting that the advocates for both the parties by consent agreed to apply for extension of mandate of the learned Arbitrator. He submitted that having consented to do so, it cannot lie in the mouth of the Respondent to oppose the prayer made in the present petition.

9. This Court has considered the rival submissions in the light of the admitted facts and in the backdrop of the judgments brought to the notice of this Court.

10. Before advertng to the judgments, it would be appropriate to first refer to the relevant statutory provision, which is Section 29A of the aforesaid Act. The relevant portion of the said provision reads as follows :

“29A Time limit for arbitral award.—(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation – For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

- (2) *If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*
- (3) *The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*
- (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.*
- (5) *The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by*

the Court.

11. A bare reading of sub-section 4 of Section 29A of the said Act, quoted hereinabove, would show that upon expiry of the extended period specified in sub-section 3 of Section 29A of the said Act, the mandate of the Arbitrator terminates, unless the Court extends the said period. In the opinion of this Court, the words “either prior to or after the expiry of the period so specified” are crucial. The aforesaid words do indicate that the Court retains the power to extend the mandate even after the period so specified has expired.

12. The view adopted by the learned Single Judge of the Calcutta High Court and the Division Bench of the Patna High Court indicates that even if the Court retains power to extend the mandate of the learned Arbitrator after expiry of the period so specified, an application or petition seeking such extension has to be made prior to expiry of the said extended period. This is evident from paragraph no. 88 of the judgment of the Division Bench of the Patna High Court in the case of *South Bihar Power Distribution Company Limited Vs. Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956* (supra), which reads as follows :

“88. *First issue which comes into mind is as to whether once the mandate of the Arbitral Tribunal has expired, the court can be justified in extending the*

same. We are of the view that submissions made on behalf of SPML or BEDCPL are misconceived. What Sub-section (4) talks about is the power of the court to extend the mandate of the Arbitrator (s) i.e. the said order could be passed during the existence of the mandate or after the expiry of the period so specified which means 12 months plus the period of extended time as per Section 29A (3) of the Act and not at the point of time when the mandate has already stood terminated even after grant of extension. As per Mitra's Legal and Commercial Dictionary, 6th Edition, the terms 'extend' means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Similarly, the word 'extension' has been stated to be an increase in length of time. This implies the word extension ordinarily meaning the existence of something to be extended and its term for the purpose of enlarging or giving further duration to any existing right, but does not import right. Similarly, the definition of the word 'extension' in Chambers 21st Century Dictionary is "The process of extending something, or the state or being extended; an added part, that makes the original larger or longer; an extra period beyond an original time limit". If the mandate has already terminated and it has expired for the Arbitral Tribunal if the legislature so intended. It would have used the term revival or renewal and not the word extension which presupposed existence of something. On this aspect, we find

some force in the submission made on behalf of the SBPDCL.”

13. As opposed to this, a learned Single Judge of the Delhi High Court in the case of *ATC Telecom Infrastructure Private Limited Vs. Bharat Sanchar Nigam Limited* (supra), in the context of Section 29A(4) and the power of the Court to extend the mandate, has observed as follows :

“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.”

14. Thereupon, the Delhi High Court took into consideration reports of the Law Commission and judgments of the Supreme Court to eventually observe that the view adopted by the learned Single Judge of the Calcutta High Court in the case of *Rohan Builders (India) Private Limited Vs. Berger Paints India Limited* (supra) could potentially thwart, rather than sub-serve the Legislative intent.

15. Having perused Section 29A(4) of the said Act, particularly in the light of use of the words “either prior to or after the expiry of the period so specified”, this Court finds that the purpose for which Section 29A was introduced in the aforesaid Act would be defeated, if it is to be held that the Court could exercise power to extend the mandate of the learned Arbitrator even after expiry of the extended period only if the application or petition for extension of mandate is filed prior to expiry of such mandate. There is nothing in the provision to indicate that if such an application or petition is not filed before the expiry of the mandate of the learned Arbitrator, the Court would be rendered powerless to exercise its authority. The aforesaid provision i.e. Section 29A of the aforesaid Act, is a provision that enables the Court to pass appropriate orders in order to ensure that the arbitral proceeding reaches its logical

conclusion. No purpose would be served in holding that if such an application or petition for extension of mandate of the learned Arbitrator is filed after the expiry of the mandate, the Court would be in no position to entertain the same. Any apprehension regarding inordinate and unexplained delay on the part of the party approaching the Court can be addressed by holding that the Court would extend the mandate only when it is satisfied that sufficient grounds are made out for granting extension of mandate of the learned Arbitrator.

16. In view of the above, this Court respectfully disagrees with the views expressed by the learned Single Judge of the Calcutta High Court in the case of *Rohan Builders (India) Private Limited Vs. Berger Paints India Limited* (supra) and the Division Bench of the Patna High Court in the case of *South Bihar Power Distribution Company Limited Vs. Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956* (supra) in the aforementioned judgments. This Court is in agreement with the view adopted by the Delhi High Court in the case of *ATC Telecom Infrastructure Private Limited Vs. Bharat Sanchar Nigam Limited* (supra).

17. Accordingly, the objection raised on behalf of the Respondent with regard to maintainability of the petition is rejected.

18. It is relevant to note that in the minutes of meeting recorded on 12th April, 2023, the learned Arbitrator has specifically recorded the consent given by both the parties for applying to this Court for extension of mandate of the learned Arbitrator. Apart from this, it is an admitted position that the Respondent participated in the final hearing of the arbitral proceedings, after expiry of the mandate of the learned Arbitrator, in September and October, 2023. The final hearing before the learned Arbitrator is virtually at the stage of culmination and therefore, sufficient grounds are made out by the Petitioners for seeking extension of mandate of the learned Arbitrator.

19. In view of the above, the petition is allowed and the mandate of the learned Arbitrator is extended from 07th August, 2023 till 31st March, 2024.

(MANISH PITALE, J.)