

\$~10(2020)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 393/2018, IA Nos. 12438/2018 & 2738/2022
UEM INDIA PVT. LTD. Petitioner
Through Mr. Gaurav Pachnanda, Senior
Advocate with Ms. Iti Agarwal,
Mr. Praful Shukla and Ms. Avni
Sharma, Advs.

Versus

ONGC LTD. Respondent
Through Mr. Abhisek Puri and Ms. Surbhi
Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.03.2022**

I.A. 9666/2020

1. The petitioner has filed the present application seeking to add further grounds for challenging the arbitral award dated 14.12.2017 (hereafter 'the impugned award'). The impugned award was rendered by an Arbitral Tribunal comprising of three members. Whilst two of the members concurred and passed the impugned award; the third member entered a dissenting opinion.
2. After the impugned award was rendered, the petitioner filed an application under Section 33 of the A&C Act seeking rectification and clarification, which was dismissed by an order 27.04.2018 passed by the Arbitral Tribunal on the ground that it was barred by limitation.
3. The petitioner has challenged the impugned award on various grounds. During the course of the proceedings, the petitioner filed an application under Section 34(4) of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act') praying that the present proceedings be

adjourned to enable the Arbitral Tribunal to remove certain grounds, which, according to the petitioner, rendered the impugned award liable to be set aside. According to the petitioner, there were certain contradictions in the impugned award and the Arbitral Tribunal was required to clarify and/or rectify the same.

4. The petitioner's application was allowed by an order dated 08.02.2019. Pursuant to the said order, the Arbitral Tribunal considered the petitioner's contentions and the majority (two members of the Arbitral Tribunal) passed an order dated 10.01.2020. The other learned arbitrator did not agree with the majority and passed a separate order dated 14.01.2020.

5. The petitioner contends that there is an overlap in the grounds as urged for seeking rectification under Section 33 of the A&C Act and the application that has been filed under Section 34(4) of the A&C Act. The petitioner now seeks to add further grounds to challenge the impugned award read in the light of the subsequent orders passed by the Arbitral Tribunal pursuant to the order passed by this Court under Section 34(4) of the A&C Act.

6. The learned counsel appearing for the respondent has opposed this application; he contends that the petitioner seeks to urge fresh grounds to challenge the impugned award, which is impermissible as the time for filing the application to set aside the award has since elapsed. He submits that adding further grounds at this stage would, in effect, tantamount to the petitioner laying a belated challenge to assail the impugned award on the ground, which it had forfeited, by not impeaching the impugned award on those grounds.

7. I have heard the learned counsels for the parties and also examined

the new grounds sought to be urged by the petitioner. It is apparent that the petitioner seeks to urge further grounds that have arisen because the impugned award is now required to be read in light with the order passed by the Arbitral Tribunal under Section 34(4) of the A&C Act.

8. There is no remedy available to the petitioner against the order passed by the Arbitral Tribunal under Section 34(4) of the A&C Act as the same is not a fresh award, which can be impeached by filing a separate petition under Section 34 of the A&C Act.

9. The contention that an order passed by the Arbitral Tribunal does not give rise to any fresh ground to assail the impugned award which, in effect, in this case remains unaltered, is unpersuasive. Whilst the challenge in this petition remains to be the impugned award and the fact that it may be required to be read in the light of the orders passed by the Arbitral Tribunal under Section 34(4) of the A&C Act, this would give the petitioner the right to raise fresh grounds, which perhaps were not expedient to raise when the petition was filed.

10. It is important to bear in mind that the impugned award remains unaltered. The only difference being that it is now to be read with the order passed by the Arbitral Tribunal under Section 34(4) of the A&C Act. In this view, the petitioner cannot be precluded from raising such additional grounds as may be otherwise available to it *albeit* to challenge the impugned award if read in conjunction with the order passed by the Arbitral Tribunal pursuant to this court's order 08.02.2019 allowing the application under Section 34(4) of the A&C Act.

11. It is seen that some of the grounds as sought to be urged by the petitioner are *ex-facie* untenable, however, this Court need not examine the

merits of the ground at this stage as it is open for the parties to advance contentions in this regard.

12. In view of the above, the application is allowed. The amended petition is taken on record.

O.M.P. (COMM) 393/2018

13. Reply, if any, to the amended petition be filed within a period of two weeks from today.

14. Rejoinder, in any, be filed within a period of one week thereafter.

15. List on 19.07.2022.

VIBHU BAKHRU, J

MARCH 15, 2022

Ch

[Click here to check corrigendum, if any](#)