

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**Reserved on: 29.11.2023
Pronounced on: 27.12.2023**

Arb P 1/2023

M/S Malhotra Constructions Company,
Through its Prop. S. K. Malhotra (aged 83 years),
S/o G. R. Malhotra
R/o B-9/6396 Vasant Kunj, New Delhi - 110070

... Petitioner/applicant

Through: Mr. Manzoor Ahmad Dar, Adv. with Mr. Tawheed Ahmad, Adv.

V/s

1. NHPC Limited through its Manager, Civil, Uri
2. General Manager, Uri II PS
3. Chief Engineer, Civil, Uri II
4. Manager, Civil, NHPC, Uri II

... Respondents/Non-applicants

Through: Mr. G. N. Monga, Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T

Facts:

1. The instant application has been filed by the petitioner/applicant herein seeking extension of time for making of award by the Arbitral Tribunal constituted pursuant to the arbitration clause contained in the contract agreement executed *inter se* the parties herein being the petitioner/applicant herein and the respondents/non-applicants herein.
2. The application under consideration owes its origin to the allotment of certain contracts by the respondents/non-applicants herein in favour of the petitioner/applicant herein. During execution of the aforesaid contracts and post-formulation of the final bills, certain

disputes arose between the parties which resulted into invoking of arbitration clause contained in the agreement entered into between the parties, and based on the said arbitration clause the respondents/non-applicants herein nominated Mr. Pirzada Mumtaz Ahmad as their arbitrator, and the petitioner/applicant herein nominated retired Chief Engineer Mr. Mohammad Yousuf Bhat as his arbitrator, whereafter the said nominated arbitrators appointed Mr. Ehsanul Haq Fazili as presiding arbitrator (hereinafter for short the Arbitral Tribunal).

3. The Arbitral Tribunal after its constitution held the first hearing on 05.4.2018 whereafter the pleadings came to be completed by the parties on 19.11.2018 on which date issues too were formulated.
4. The grounds urged by the petitioner/applicant herein seeking extension of time in the instant application is that on account of Covid-19 pandemic with effect from 15.3.2020 to 22.2.2022 substantial proceedings could not be conducted by the Arbitral Tribunal and on the basis of the orders passed by the Apex Court dated 23.3.2020 in the case titled as **“Re: Cognizance for extension of limitation reported in (2020) 19 SCC 10”** extension of time was granted in all matters including matters concerning arbitration and the initial extension granted by the Apex Court was extended from time to time and ultimately in terms of final order dated 10.1.2022 the extension period provided in the said judgment covered period commencing from 15.3.2020 to 28.2.2022 being approximately 1 year, 11 months and 15 days, and that after the expiry of the said

period by the Apex Court, the Arbitral Tribunal took up the matter for getting extension in terms of email dated 19.9.2022 to which the respondents/non-applicants herein did not agree resulting into institution of the instant application by the petitioner/applicant herein.

5. Upon filing of the instant application the respondents/non-applicants filed objections thereto contending therein that no delay can be attributed to them and delay, if any, is relatable to the petitioner/applicant herein and the Arbitral Tribunal. However, at the same time the respondents/non-applicants admitted that the delay was also contributed by the non-availability of officials under whose close supervision the work in question was executed, who had either been transferred or superannuated.

Heard learned counsel for the parties and perused the record.

6. According to the counsel for the petitioner/applicant herein under and in terms of the provisions of Section 29-A read with Section 23 of the Arbitration and Conciliation Act, 1996 (for short the Act of 1996), a timeframe of 12 months came to be fixed from the date of entering upon reference viz. 5.4.2018 i.e. when the first hearing was conducted by the Arbitral Tribunal for making an award, which period was extendable by six months with mutual consent, and in the event further extension was required it could be sought and granted by the court either prior to or after the period specified failing which the mandate of arbitrator would terminate, however, on account of amendment made in the year 2019 in the Act of 1996

and upon the latest reading of section 23(4) and section 29-A the aforesaid period of one year came to be provided to commence from the date of conclusion of the pleadings and that the said amendment being retrospective in nature the same became applicable to the instant case thereby commencing the initial period of one year from 19.11.2018 i.e. when the issues were framed which period of one year expired on 18.11.2019 during which period proceedings could not take place till January 2020 on account of law and order situation prevailing in the Valley, besides, the proceedings also got delayed owing to the outbreak of Covid-19 pandemic and consequent lockdown in March 2020 till February 2022, which was even taken cognizance of by the Apex Court in the matter of extension of period of limitation in the relevant cases.

Learned counsel would further contend that the parties during the course of the proceedings before the Arbitral Tribunal, with their consent extended the time of the Arbitral Tribunal for enabling it to conclude arbitral proceeding and passing of the award till 8.4.2021, whereafter the extended period of six months ended, which period too being Covid-19 pandemic period was allowed to be condoned by the Apex Court whereafter the Arbitral Tribunal in terms of email dated 29.09.2022 called upon the parties to take steps for extending the time, whereupon the petitioner/applicant herein conveyed his no objection in seeking/allowing extension but the respondents/non-applicants chose not to respond to the request so made and instead informed the Arbitral Tribunal that they have taken up the matter

with the higher authorities and that since no steps were taken in seeking extension post-expiry period of six months, the petitioner/applicant herein thus maintained the instant application on 5.1.2023 seeking indulgence of this court for extension of time under and in terms of section 29-A of the Act of 1996.

7. On the contrary, the counsel for the respondents while opposing the application would make the submissions in line and tune with the objections filed to the application.
8. A bare perusal of the provisions of Section 29-A of the Act of 1996 read with section 23(4) passed in terms of amendment of 2019 would reveal that in case time for making of the award has expired or the extended period as specified in sub-class (3) has come to an end, the mandate of the arbitrator would stand terminated unless the court has either prior to or after the expiry of the period as specified extended the period. Thus in terms of sub-section (4) of Section 29-A it can safely be concluded that the mandate of the arbitrator would not stand terminated in case the court would either prior to or after the expiry of the period as specified extended the time, and in case it finds that the proceedings have been delayed on account of the slackness of the Arbitral Tribunal, order reducing fee of the Arbitral Tribunal could be directed.

A further perusal of subs-section (4) of section 29 of the Act of 1996 would reveal that in case extension application is pending, the mandate of the arbitrator would continue till disposal of the said application and in terms of sub-section (5) of section 29-A both the

parties have liberty to approach the court for seeking extension upon showing a sufficient cause.

9. Having regard to the aforesaid position and reverting back to the case in hand, perusal of the instant application and in particular the grounds urged therein together with the response filed thereto by the respondent/non-applicants herein, it is manifestly clear that the petitioner/applicant herein has elaborately explained reasons for the delay in making the award. Perusal of the record reveals that the Arbitral Tribunal has conducted 18 hearings and proceedings are at its final stage and since a considerable period of time and energy stands consumed besides incurring substantial amount of costs paid by the parties to the arbitrators of the Arbitral Tribunal, ends of justice would warrant granting of extension.
10. It is significant to note here that the Apex Court in terms of order passed in **2023 SCC Online SC 1466** has stayed the operation of the judgment of the Calcutta High Court passed in case titled as **Vrindaran Advisory Societies Vs. Deep Shambulal** wherein the High Court provided that under section 29-A read with section 23(4), no application seeking extension is maintainable after the mandate of arbitrators has come to an end, whereas Delhi High Court in case titled as **NCC Ltd. V/s UOI reported in 2018 SCC Online Del 12699** and **A.T.C. Telecom Infra Vs. Bharat Sanchar Nigam reported in (2023) 12 DEL CK 0019** has held otherwise.
11. Viewed thus, what has been observed, analyzed and considered hereinabove, particularly having regard to the fact that arbitration

proceedings are at the final stage, this court is inclined to allow the application and extend the time. Accordingly, the application is allowed and a period of three months commencing from the date of the passing of this order is extended.

12. Disposed of.

(JAVED IQBAL WANI)
JUDGE

Srinagar
27-12-2023
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes

