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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(MISC.)(COMM.) 50/2017

IDBI BANK LIMITED

..... Decree Holder

Through: Mr .Raunak Dhillon, Mr.George
Varghese & Ms.Ananya Dhar
Choudhury, Advs.

versus

HARYANA STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED & ANR. Judgement Debtors

Through:

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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28.11.2017

1. This petition under Section 29A (4) & (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner praying for extension of time for making of the Arbitral Award in the disputes that have arisen between the parties in relation to the Substitution Agreement dated 8th January, 2007.

2. The reply filed by the respondent No. 1 is returned under office objection. However, a copy of the same has been handed over and I shall be

considering the same.

3. The Supreme Court in its Judgment dated 13th May, 2016 passed in IA No. 363-364/2015 in IA No. 344, 355 and 362 in W.P(C) No. 13029/1985 had referred the parties to the present Arbitral Tribunal for adjudication of their disputes. The period for the Award was first extended with consent of the parties on 24th February, 2017 by the Arbitral Tribunal.

4. In the proceedings held on 3rd September, 2017, the Arbitral Tribunal directed the parties to consider making a joint application for seeking extension of time for making of the award till 31st March, 2018.

5. The learned counsel for respondent No. 1 submits that though in principle respondent No. 1 has no objection to the extension of time, however, the fee to be charged by the Arbitral Tribunal should be in accordance with Schedule IV of the Act. He further brings to my notice the record of proceedings dated 14th June, 2016 whereby the fee of Arbitral Tribunal was fixed with consent, however, later on an application was also moved before the Arbitral Tribunal praying for reduction of the fee and

fixing of the same in accordance with Schedule IV of the Act. He submits that this application was dismissed by the Arbitral Tribunal by its order dated 12th July, 2017. He, therefore, prays that either any alternative Arbitral Tribunal be appointed or the time be extended with the condition that there is a reduction in the fee. He further submits that, as of today, an amount of Rs. 1.66 Crores has already been paid by the parties as arbitral fee. There have been almost 38 hearings conducted by the Arbitral Tribunal.

6. The learned counsel for the respondent No. 2, opposing the prayer made in the petition, submits that it is neither a necessary nor a proper party in the Arbitral proceedings as there is no claim made by either the petitioner or respondent no. 1 against it. He further submits that respondent no. 2, in fact, had made an application seeking deletion which was dismissed by the Arbitral Tribunal.

7. I have considered the submissions made by the learned counsel for the parties. The objection of respondent No. 2 cannot be sustained inasmuch as whether it is a necessary or proper party to the Arbitration proceedings is a matter which has already been decided by the Arbitral Tribunal and can be

challenged only in accordance with its rights under the Act. I am also informed that respondent No. 2, pursuant to the above rejection, filed a counter claim which was refused to be taken on record by the Arbitral Tribunal and respondent No. 2 has already invoked its remedies against such refusal. In that view of the matter and taking into account the limited controversy that is involved with respect to the extension of time, the objection of respondent No. 2 cannot be sustained and is rejected.

8. It is not disputed before me that the Arbitral Tribunal has acted with expedition as far as the conduct of the Arbitral proceedings is concerned. It is also not disputed that the Arbitral proceedings could not be concluded within the time granted by Section 29A of the Act because of the various issues and the kind of evidence that has to be led before the Arbitral Tribunal. In my view, therefore, the time for making of the Award is to be extended till the period 31st May, 2018.

9. At the same time, the grievance of respondent No. 1 also needs to be considered. As noted above, an amount of Rs. 1.66 Crores has already been paid as arbitral fee by the parties. The fee fixed by the Arbitral Tribunal is Rs. 1.5 lakh per Arbitration sitting. Taking into account the fact that the time

period has now been extended till 31st May, 2018, and also as pointed out by the counsel for the parties, that in another Arbitration between respondents Nos. 1 and 2, the same Arbitral Tribunal has fixed Rs. 1 lakh per Arbitration sitting, I direct that for the extended period of time, the Arbitral Tribunal shall be paid a fee of Rs. 1 lakh per Arbitration sitting.

10. In view of the above, the present petition is allowed on the above terms, with no order as to costs.

11. *Dasti*

NAVIN CHAWLA, J

NOVEMBER 28, 2017/rv