

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.104 OF 2018

Modi Dairy	...	Petitioner
versus		
Alfa Laval (India) Ltd.	...	Respondent

Mr. Rashid Khan I/by Ms. Suvarna Joshi, for Petitioner.

Ms. Alpana Ghone with Mr. Chirag Dave, Mr. Dnyaneshwar Jadhav I/by M/s. Legasis Partners, for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 8th OCTOBER, 2018

P.C.:

1. The above Arbitration Petition is filed under Section 15 of the Arbitration and Conciliation Act, 1996 (the 'Act') by the Petitioner – Modi Dairy, seeking termination of the mandate of the Arbitral Tribunal which was constituted by an Order passed by K.R. Shriram, J. dated 13th October, 2017, and to appoint some fit and proper person as an Arbitrator in substitution of the earlier Arbitral Tribunal, for resolving the disputes between the Petitioner and Respondent.

2. The facts which have led to the filing of the above Petition are as under :

2.1 By an Order dated 13th October, 2017 passed in Arbitration Petition No.36 of 2017, a learned retired Judge of this Court was appointed as an Arbitrator to decide the disputes between Alfa Laval (India) Ltd. ('Alfa') and Modi Dairy ('Modi'), the Petitioner and Respondent respectively therein.

2.2 On 4th January, 2018, in the Meeting held before the Learned Arbitrator, certain directions for filing Statement of Claim, Written Statement and Statement of Counter Claim were passed. Clauses 9, 10 and 11 of the said Minutes/Order dated 4th January, 2018 are reproduced hereunder :

“9. The parties are informed that the deadlines set above are to be strictly adhered to. No extensions/adjournments will be granted except in the gravest of circumstances and subject to payment of costs. Parties must note that such costs shall be a minimum of Rs.20,000/-. No further notice will be given of the dates mentioned above.

Arbitrator's fees :

10. The parties are informed that the fees of the arbitrator are Rs.70,000/- (Rs. Seventy Thousand only) for session of two hours or part thereof to be shared equally by both sides, at this stage. This does not include reasonable administrative costs incurred by the Arbitrator which shall be charged as they are incurred.

11. The parties are directed to deposit an amount of Rs.2,00,000/- each being payment on account of the fees of the Arbitrator, within two weeks from today. All payments must be made by cheque/NEFT. The details of the Bank Account of the Sole Arbitrator are as under : The next hearing in this matter shall take place on 11th June, 2018 at 5.30 p.m., at the Fort Office of the Sole Arbitrator. Said hearing shall be for framing of points of determination and to give further directions in

the Arbitration. Advocates for both the parties submit that they will take instructions from their respective clients and inform the Tribunal within a period of two weeks whether leading of oral evidence can be dispensed with and that whether the matter can be decided on the basis of documentary evidence available”.

2.3 Thereafter, the Advocate for Alfa sent an email to the Learned Arbitrator requesting for some more time to file the Statement of Claim on the ground that the Claimants are in the process of collecting documents and drafting Statement of Claim.

2.4 The Learned Arbitrator forwarded his Order dated 12th February, 2018 via e-mail, wherein after recording that no specific ground is mentioned for not filing the Statement of Claim on time, and thereafter referring to Paragraph 9 of his Order dated 4th January, 2018 which is reproduced hereinabove, the Learned Arbitrator recorded as under :

“3. It must be noted that any noncompliance of the schedule already fixed is causing disruption of the Arbitral Proceedings and hamper smooth functioning of the Tribunal leading to ultimate delay in the process. Moreover, it affects other matters undertaken by the Arbitral tribunal and also affects the speedy disposal of Arbitration Proceedings.

*4. Under the circumstances, now the time for filing the Statement of Claim by the Claimant is extended till 17th February, 2018, **subject to costs to be deposited with the Tribunal in a sum of Rs.50,000/- (Rs. Fifty Thousand***

only) before 17th February, 2018.

5. Except the above, rest of the schedule earlier fixed on 4th January, 2018 shall remain same.”

2.5 Thereafter, Ms. Suvarna Joshi, Advocate for Modi by her emails addressed to the Learned Arbitrator on two occasions sought extension of time to file the Statement of Defence. On both the occasions, time was granted by the Learned Arbitrator subject to costs of Rs.50,000/- being deposited for each extension.

2.6 The Learned Arbitrator vide his Procedural Order dated 9th April, 2018, recorded that Modi should deposit total costs of Rs.1,00,000/- by 23rd April, 2018 with him by cheque or by NEFT transfer.

2.7 On 14th June, 2018, a Meeting was held before the Learned Arbitrator when the Learned Arbitrator altered the Schedule which was earlier fixed by an Order dated 9th April, 2018.

2.8 On 21st August, 2018, a Meeting was held before the Learned Arbitrator. The Learned Arbitrator, after hearing the rival arguments, dismissed the Application under Section 25(b) of the Act filed by the Advocate for Modi and directed that Modi shall file a Statement of Counter Claim, if any, on or before 30th August, 2018 and also deposit an amount of Rs.1,00,000/- as costs which was earlier imposed by him, by depositing the same through Netbanking with him.

2.9 On 24th August, 2018, the Advocate for Modi wrote a letter to the Advocate

for Alfa recording that the Learned Arbitrator is passing directions/Orders to pay costs to himself for condonation of delay in filing pleadings and that the practice of imposing costs that is to be paid to the Arbitrator is against the provisions of law and also against the Arbitration Agreement between the Parties concerned. The Learned Advocate for Modi further recorded that in such circumstances, she is instructed by her clients/Modi to adopt appropriate proceedings for terminating the mandate of the Arbitrator and for appointment of a new Arbitrator under Section 15(1)(b) of the said Act, and sought the consent of the Advocate for Alfa for doing so. Since no response was received from Alfa, the above Petition is filed by Modi before this Court.

3. I have perused the Petition and the Annexures thereto. I have also considered the submissions of the Advocates for the concerned Parties. The Advocates for the Parties have submitted that once the Learned Arbitrator fixes his fees, he is entitled to receive the same for the days on which the meetings are fixed by him. However, he is certainly not entitled to ask the parties to pay costs to him if they, through an email sent by their Advocates, seek extension of time to file the pleadings. The Learned Arbitrator had, by his Order dated 4th January, 2018, clearly set out his fees i.e. Rs.70,000/- for a session of two hours or part thereof, to be shared equally by both sides and had also clarified that over and above the said fees, reasonable administrative costs incurred by the Arbitrator shall be charged to the parties. The Learned Arbitrator in Paragraph 9 of the said Order had recorded that if the deadlines

qua filing of the Statement of Claim, Statement of Defence/Counter Claim etc. are not adhered to, **no extensions/adjournments shall be granted except in the gravest of circumstances** subject to payment of costs and that the parties should note that such cost would be a minimum of Rs.20,000/-.

4. Reading of the said Clause conveys only one meaning/interpretation, namely that no extension would be granted unless grave circumstances are shown and even if such circumstances are shown, time will not be granted without payment of costs. Such costs are always payable to the other side and certainly not to the Learned Arbitrator. The Learned Arbitrator is certainly entitled to his fees. Even if a party/parties seek/s and obtains adjournment/s on the days fixed for hearing, the Arbitrator/s may still insist that his/their fees or part thereof be paid. However, the Arbitrator/s, apart from charging his / their fees, cannot direct any party to pay costs to him / them on any ground, including the ground that the pleadings are not filed on time by the parties, or for granting extension/s to file pleadings. In the circumstances, the Advocate for Alfa by an email only requested the Arbitrator to extend time to file a Statement of Claim which was directed to be filed on or before 12th February, 2018. The Learned Arbitrator by an email granted time of seven days without disturbing the further schedule, i.e. the date of hearing fixed on 11th June, 2018. Similarly, the Learned Arbitrator granted two extensions to Modi to file the Statement of Defence. However, the Learned Arbitrator directed payment of costs to himself which he

certainly cannot do. If the Learned Arbitrator is of the view that the party is seeking time without showing any grave circumstance, and is doing so only with a view to delay the matter, he has all the powers at his command to reject the Application seeking extension/adjournment, but cannot direct the party/ies to pay costs to him, which admittedly is not covered in the term 'fees', which he is entitled to charge.

5. In fact, in the instant case I have noted that though the Arbitrator had, in the Procedural Order dated 4th January, 2018, clarified that no extensions/adjournments shall be granted except in the gravest circumstances, that too upon payment of costs, the Learned Arbitrator, despite recording in his Order that no specific ground is mentioned for seeking extension, has proceeded to grant time to the parties upon payment of costs to him. Such procedure cannot be permitted to be followed by any Arbitrator/s and his/their mandate can be terminated on this ground. However, in the instant case, both the Parties have now agreed to terminate the mandate of the Learned Arbitrator and appoint Mr. Salil Shah, Advocate as the Sole Arbitrator to decide all the disputes between them. The mandate of the Learned Arbitrator therefore automatically stands terminated under Section 15(1)(b) of the Act and no order of termination is required to be passed as prayed. It is agreed that Modi shall not challenge the mandate of the Arbitrator now appointed on the ground that there is no valid arbitration Clause. The above Arbitration Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)