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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 15.10.2018

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O.M.P.(MISC.)(COMM.) 42/2018

M/S VIL ROHTAK JIND HIGHWAY
PRIVATE LIMITED

..... Petitioner

Through: Mr. T.K. Ganju, Sr. Adv. with
Manish Dembla and Mr. Abhishek
Bhardwaj, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY
OF INDIA

..... Respondent

Through: Mr. Narendra Hooda, Sr. Adv. with
Mr. Mukesh Kumar, Ms. Kritika
Shukla, Ms. Padma Priya and Mr.
Shubham Saxena, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 29A of the Arbitration and Conciliation Act, 1996 (in short "1996 Act").
2. By virtue of this petition, the petitioner seeks extension of time for conclusion of the arbitration proceedings. The record pertaining to the instant petition and the arbitration petition i.e., ARB.A. (COMM.) No.10/2018, shows that the parties herein are locked in a fierce legal battle.
 - 2.1 The petitioner had earlier approached this Court by way of a petition under Section 9 of the 1996 Act, wherein, based on certain representations made, an interim order dated 25.7.2016 was passed, which, restrained the respondent from taking any coercive steps. This order, however, was vacated on 9.1.2017.

3. Being aggrieved, the petitioner carried the matter in appeal to the Division Bench. The Division Bench vide order dated 16.1.2017, set aside the order dated 9.1.2017 and remitted the matter back to the learned Single Judge with a direction that the position which obtained in the matter prior to 9.1.2017, will continue to subsist.

3.1 This direction, in effect, restored *status quo ante* and revived the interim order dated 25.7.2016.

4. The Section 9 petition was finally disposed of via order dated 12.5.2017.

5. Since, the Arbitral Tribunal was already in place, the learned Single Judge continued the operation of the order dated 25.7.2016 with a direction that the Section 9 petition will be treated as a petition filed under Section 17 of the 1996 Act before the Arbitral Tribunal and that the same would be decided in accordance with law.

6. I am told that in order to hasten the process, the respondent filed an application on 27.5.2017, for vacation of the interim order.

6.1 Pleadings in the application were completed on 27.6.2017.

6.2 Furthermore, on the very next date i.e., 28.6.2017, the respondent filed its statement of defence. It appears that arguments on the interlocutory application were heard on 1.8.2017 & 2.8.2017.

6.3 The Arbitral Tribunal passed the order on the interlocutory application on 12.1.2018. As indicated above, the said order has been carried in an appeal to this Court by the respondent. The said appeal is numbered as Arbitration Appeal (Commercial) 10/2018, is listed on my board, today.

7. I have heard arguments in part in the arbitration appeal.

7.1 Insofar as the arbitration proceedings is concerned, it is not in dispute that the petitioner herein has filed its affidavit of admission and denial of documents as well as an affidavit of its witnesses. The respondent, it appears, has neither filed its affidavit of admission and denial of documents, nor filed the affidavit of evidence of its witnesses.

8. The record shows that the last hearing, which was held by the Arbitral Tribunal was on 10.3.2018. It appears that the respondent has refused to extend time by mutual consent. The first meeting of the Arbitral Tribunal was held, admittedly, on 3.3.2017. One of the reasons, which has emerged as to why the respondent has refused to give consent to extension of time, is its grievance with the order passed by the Arbitral Tribunal qua the interlocutory application dated 12.1.2018. That order, as alluded to above, is under challenge and the appeal is currently being heard by me.

9. Given the aforesaid facts and circumstances, as set out above, it is evident that the parties have already invested much time and money in the arbitration proceedings. Therefore, I am of the view that no purpose could be served in stalling the arbitration proceedings. This position, I am inclined to take as, in any event, on merits the Arbitral Tribunal will have to rule one way or the other.

10. Accordingly, I intend to extend the time for concluding the arbitration proceedings and rendering the award.

11. Insofar as the petition is concerned, this was filed in and about 21.3.2018 and at that point in time, extension was sought till 15.8.2018. Obviously, the prayer, because of pendency of the proceedings has in a sense, become stale and therefore, time will have to be consequently modulated.

12. In these circumstances, the Arbitral Tribunal is granted extension of time by another twelve (12) months for the purpose of concluding arbitration proceedings and rendering the award. The period of twelve (12) months will, however, commence from 10.3.2018.

13. The respondent is given liberty to file an affidavit of admission and denial of documents as well as an affidavit of its witness. These will be carried to the Tribunal, if possible, on the next date of hearing. Learned counsel for the petitioner says he has no objection to such a direction being issued.

14. For the purpose of revival of the proceedings, counsel and their parties will appear before the Tribunal on 25.10.2018 at 3.00 p.m. In case the aforesaid date is not convenient, the Arbitral Tribunal will fix a date proximate to the aforesaid date.

15. The captioned petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

OCTOBER 15, 2018/pmc