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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 9th August, 2018

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O.M.P. (MISC.) 8/2018

SH. PUNEET SOLANKI & ANR. Decree Holders

Through: Mr.Harish Malhotra, Sr.Advocate, with
Mr.Rohi Jain, Advocate.

versus

SAPSI ELECTRONICS PVT. LTD. & ORS..... Judgement Debtors

Through: Mr.Manoj K.Singh with Mr.Anurag,
and Ms.Kanishka Prasad, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed under Section 29A(4) of the Arbitration and Conciliation Act, 1996 seeking extension of time for making of the Award by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the alleged *bayana* receipt cum Agreement dated 2.11.2012. I have intentionally used the word 'alleged' as the respondents dispute the genuineness of this document.

2. The Arbitrator had entered upon the reference on 18.03.2017 and due to the refusal of the respondents to give consent for the extension of time after the expiry of the one year period as prescribed under Section 29A(1) of the Act, the present petition has been filed.

3. The learned counsel for the respondents submits that the time

for making of the Award should not be extended and in any case, this Court in exercise of its powers under Section 29A(6) of the Act should order substitution of the Arbitrator. In support of the submission he draws the attention of this Court to the orders dated 21.03.2017 and 23.03.2017 passed by the Arbitrator and submits that while notice on the application under Section 17 of the Act filed by the petitioner had been issued to the respondents only on 23.03.2017, by an earlier order dated 21.03.2017, the Arbitrator had already taken cognizance of the said application and in fact, even passed interim order in favour of the petitioner. Learned counsel for the respondents has further submitted that the petitioner has filed a Civil Suit before the Court of Senior Civil Judge, Dwarka, New Delhi, against the respondents for the same cause. Relying upon the judgment of the Supreme Court in *Sukanya Holdings (P) Ltd. vs. Jayesh H.Pandya and Anr.* (2003) 5 SCC 531, he submits that such bifurcation of cause of action cannot be permitted and therefore, arbitration cannot be proceeded with. Lastly, it is submitted that the Arbitrator has not been acting with expedition and, in fact, has been adjourning the proceedings without any communication to the respondents and without passing any formal orders. A complaint in this regard was made by the respondents to the Arbitrator vide letter dated 09.03.2018.

4. I have considered the submissions made by the learned counsel for the respondents. As far as the first two submissions are concerned, in my opinion, they fall beyond the scope of examination by the Court in exercise of its power under Section 29A(4) of the Act.

Whether the arbitration proceedings had been rightly initiated by the petitioner is a matter to be adjudicated in an appropriate proceeding but cannot be a ground for refusal to extend time for making of the Award or for ordering substitution of the Arbitrator. In this regard it is informed that the respondent no.1 had earlier filed an application under Section 14 of the Act challenging the mandate of the Arbitrator being OMP (T) (COMM) 45/2017. The same has been dismissed as withdrawn by this Court observing as under:-

“5. It is apparent that the petitioner has serious disputes, however it is doubtful whether a petition under section 14 of the Act would be an appropriate remedy. At this stage, the learned counsel for the petitioner seeks to withdraw the present petition reserving its right to agitate the aforesaid matter at an appropriate stage in an appropriate forum, if necessary.

6. In view of the aforesaid, the present petition is dismissed as withdrawn. However, it is necessary to observe that it is mandatory for an arbitrator to make a disclosure under Section 12 of the Act prior to his appointment notwithstanding whether any application to the said effect has been made by any of the parties or not. The petitioner would be at liberty to demand such disclosure and needless to state the arbitrator will make the disclosure in accordance with the Act.

7. The petition is dismissed as withdrawn with the aforesaid observation.”

5. The respondents cannot be allowed a second round of challenge on the same allegation. In case the respondents have any grievance regarding the impartiality of the Arbitrator, the recourse of the respondents is in form of an application under Section 13 of the Act or after the passing of the Award, under Section 34 of the Act. In

case the grievance is that the arbitration proceedings itself are not maintainable, the remedy again is in Section 16 and Section 34 of the Act. Substituting the Arbitrator at the request of the respondents would itself pre-suppose that the respondents agree to the maintainability of such proceedings.

6. As far as the allegation of delay in adjudication of the disputes by the Arbitrator is concerned, the learned senior counsel for the petitioner has submitted that the Arbitration proceedings could not proceed as the respondent no.1 had earlier filed the abovementioned application under Section 14 of the Act. The respondents had also filed applications under Section 16 of the Act, which were finally dismissed by the Arbitrator vide order dated 21.09.2017. The pleadings of the parties have been completed before the Arbitrator and one witness of the petitioner has already been examined. Thereafter, when the petitioner sought to summon witnesses, the same was objected to by the respondents thereby causing further delay in adjudication of the disputes before the Arbitrator.

7. In my opinion, as the arbitration proceedings have reached the stage of recording of the evidence of the petitioner-claimant and taking into account the entire set of circumstances mentioned hereinabove, it cannot be said that the Arbitrator is not acting with expedition.

8. In view of the above, I extend the time for making of the arbitral award by a further period of six months with effect from today. I may only clarify that all the objections of the respondents to the arbitrator and to the maintainability of the arbitration proceedings

are left open to be adjudicated in a proper proceeding and are not being commented upon by this Court in the present order.

9. The petition is allowed in the above terms with no orders as to costs.

NAVIN CHAWLA, J.

AUGUST 09, 2018

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