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

\+ O.M.P.(MISC.)(COMM.) 132/2018

OCCPL (ONTIME CARGOAND COURIERS PVT. LTD.) & ANR. ..... Petitioners

Through: Mr.Sachin Chopra and Ms.Aastha, Advs.

versus

SANJAY KUMAR SINGHANIA & ANR. ..... Respondents

Through: Mr.Sudhir Nandrajog, Sr. Adv. with Mr.Aneesh Mittal and Ms.Shreya Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% **07.08.2018**

This petition under Section 29A(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioners seeking extension of time for making of the Arbitral Award by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Memorandum of Understanding dated 12.08.2011.

This Court vide order dated 07.11.2016 had appointed the Sole Arbitrator on a petition filed under Section 11 of the Act by the petitioner herein.

The learned senior counsel for the respondents opposes the present petition on the ground that there has been an inordinate delay by the Arbitrator in adjudicating the disputes between the parties and therefore, while the respondents have no objection in grant of extension of time for making of the Arbitral Award, in exercise of its power under Section 29A(6) of the Act, this Court should substitute the Arbitrator. It is further contended that the Arbitrator has not given a disclosure in terms of Section 12 of the Act in spite of a request by the respondents by way of an application made before the Arbitrator. He submits that in fact, the Arbitrator vide his order dated 17.10.2017 has held that he is not obliged to give a disclosure under Section 12 of the Act as he has been appointed by the Court under Section 11 of the Act.

I have considered the submissions made by the learned senior counsel for the respondents, however, in the peculiar facts of the present case, I am unable to agree with the same.

As far as the conduct of the proceedings is concerned, the respondents had challenged the appointment of the Arbitrator before the Supreme Court by way of a Special Leave Petition, being CC No.8618/2017. The same was dismissed by the Supreme Court vide order dated 28.04.2017. On the same day, the petitioner had filed the Statement of Claim before the Arbitrator and the Arbitrator had granted time to the respondents to file their Statement of Defence. Instead of filing its Statement of Defence, the respondents at this stage filed an application under Section 12 of the Act seeking disclosure statement from the Arbitrator. This application was filed on 25.07.2017, that is almost more than eight months after the appointment of the Arbitrator and three months after the dismissal of the Special Leave Petition by the Supreme Court.

The learned senior counsel for the respondents submits that this disclosure statement should have been made by the Arbitrator unilaterally without requiring any application from the respondents. Though, this would be correct, the proceedings before the Arbitrator indicate that this application was filed merely to somehow stall the arbitration proceedings. Thereafter, the respondents filed an application under Section 16 of the Act on 12.08.2017. The same was decided by the Arbitrator vide order dated 24.02.2018. In between there was an application under Order 1 Rule 10 of Code of Civil Procedure, 1908 filed by a third party Omnitech Engineers (India) Pvt. Ltd. It was dismissed by the Arbitrator vide order dated 10.12.2017.

The parties by mutual consent and in accordance with the Section 29A(3) of the Act, extended the time for making of the Award by a further period of six months on 30.11.2017. Therefore, the question of lack of disclosure statement by the Arbitrator or the delay in deciding the application under Section 12 of the Act had been considered by the parties themselves while extending the time by a further period of six months after the Arbitrator had already rejected the application under Section 12 of the Act vide his order dated 12.10.2017. Therefore, in my opinion, the fact that the Arbitrator had failed to give a disclosure statement under Section 12 of the Act or the decision on the application filed by the respondents being delayed by the Arbitrator, would lose all significance once the respondents have themselves consented to the extension of time for making of the Award in exercise of power vested in the parties to the arbitration under Section 29A(3) of the Act.

I may also take note of the fact that the Arbitrator in his order dated 11.04.2018 and 14.05.2018 recorded that the learned counsels for the parties had submitted before him that they would be jointly moving an application under Section 29A(4) and (5) of the Act seeking extension of time for making of the Arbitral Award. Though, learned counsel for the petitioner had circulated a draft of the said application to the respondents vide email dated 22.05.2018, it was only on that stage that the learned counsel for the respondents replied stating that at present, the respondents were not agreeing to the extension of time. Clearly, the opposition to the grant of extension of time now is only an afterthought and merely to stall the arbitration proceedings or to somehow manage to change the Arbitrator. In my opinion, the same is an abuse of process of this Court and cannot be allowed.

The purpose of Section 29A of the Act is to only ensure that the Arbitral Tribunal is alive to the object of ensuring an expeditious disposal of the disputes between the parties and that the arbitration proceedings are not prolonged without any sufficient cause. It is not aimed to stall the arbitration proceedings or for changing the Arbitrator only because one of the parties to the arbitration proceedings find the Arbitrator inconvenient.

In view of the above, the time for making of the Award is extended by a further period of six months with effect from today.

It is hoped that the parties shall jointly cooperate with the Arbitrator in ensuring an expeditious disposal of the arbitration proceedings and making of the Award. Cost of the present petition is quantified as Rs.25,000/- to be paid by the respondents to the petitioner.

The petition is allowed in the above terms with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 07, 2018/Arya