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

+ O.M.P.(MISC.)(COMM.) 172/2018

SSANGYONG ENGINEERING & CONSTRUCTION CO., LTD.

..... Petitioner

Through: Ms.Rashmeet Kaur, Adv.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI)

..... Respondent

Through: Mr.Ankur Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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14.08.2018

This petition has been filed under Section 29A (4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking extension of time for making of the Arbitral Award by the Arbitral Tribunal adjudicating the disputes that have arisen between the parties in relation to the work of Construction of Sagar By-pass between Km 187 to Km 211 of National Highway 26 in the State of Madhya Pradesh, being Contract Package No. ADB-II/C-5 in December 2005.

The Presiding Arbitrator of the Arbitral Tribunal was appointed by the President of Indian Road Congress vide letter dated 20.07.2017. The Arbitral Tribunal had thereafter held its preliminary hearing wherein the procedural order fixing the schedule with respect to the arbitration proceedings was passed.

The petitioner challenged the appointment of the nominee Arbitrator

of the respondent and the said Arbitrator recused himself vide email dated 07.02.2018.

The respondent appointed a substitute nominee Arbitrator on 01.03.2018 and the Arbitral Tribunal, on 26.03.2018 passed further procedural order in relation to the arbitration proceedings.

The parties also submitted the admission and denial of the documents on 11.04.2018, whereafter the respondent filed further documents in support of its counter claim running into about 4000 pages.

On 10.05.2018 the respondent informed the Arbitral Tribunal about the change of its counsel and requested for an adjournment. On 31.05.2018 the respondent filed fresh applications on various issues and claims.

In this manner, the Arbitral Tribunal was unable to make the Arbitral Award within the period of 12 months as provided in Section 29A(1) of the Act and vide its order dated 31.05.2018 called upon the parties to extend the period of making of the Award by further period of six months as provided in Section 29A(3) of the Act.

On 17.07.2018 the Arbitral Tribunal passed orders on the applications filed by the respondent. Thereafter, the respondent has filed another application seeking amendment of its counter claim. However, at the same time it failed to convey its consent for extension of time for making of the Arbitral Award by the Arbitral Tribunal, forcing the petitioner to file the present petition.

Notice of this application was issued to the respondent on 01.08.2018. Today, learned counsel for the respondent has produced a copy of the letter dated 03.08.2018 whereby the respondent has accorded approval to the extension of time for making of the Arbitral Award by a further period of six

months.

Recording the above consent of the respondent, time for making of the Award by the Arbitral Tribunal is extended by a further period of six months with effect from today.

It is noted that in the present case the delay in making of the Arbitral Award was also attributable to the respondent, however, in spite of the same, the respondent failed to give its consent for extension of time for making of the Arbitral Award forcing the petitioner to file the present petition. The respondent shall pay a cost of Rs.30,000/- to the petitioner for the present petition.

It is hoped that in future the respondent would act with expedition while considering grant its consent to the extension of time for making of the Arbitral Award by the Arbitral Tribunal. The purpose of Section 29A of the Act is not to scuttle the arbitration or give rise to unnecessary litigation, but to ensure that the parties are alive to the fact that the arbitration proceedings have to culminate expeditiously.

The petition is allowed in the above terms.

Dasti.

NAVIN CHAWLA, J

AUGUST 14, 2018/Arya