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

Date of Decision: 14.12.2018

+ **O.M.P.(MISC.)(COMM.) 260/2018**

TECNIMONT SPA & ANR.

..... Petitioners

Through Mr. Sanjeev Kapoor, Mr. Gaurav Juneja and Mr. Aayush Jain, Advs.

versus

NATIONAL FERTILIZERS LIMITED

..... Respondent

Through Mr. Divjyot Singh, Ms. Avsi M. Sharma, Mr. Rakesh Gogia and Mr. Hemant Kothari, Advs. alongwith Mr. J. Chopra, DGM, Project.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 29A(5) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act').
2. In this petition, notice was issued on 20.9.2018. Notice was made returnable on 23.10.2018.
3. On 23.10.2018, I was informed by the counsel for the petitioners that a similar application for extension of time had been moved before the Supreme Court as the Arbitrator had been appointed in a Section 11 petition filed before that Court.
4. In these circumstances, I had disposed of the captioned petition for the reason that a parallel petition for the same relief could not be maintained in

this Court.

5. I am informed that the petitioners' application, i.e. M.A. 2743/2018 for extension of time came up before the Supreme Court on 30.11.2018.

6. The Court after noting the order passed by me on 23.10.2018 set aside the order as the petitioners by consent decided to withdraw their application and renew their request for extension of time in the instant petition.

7. The operative directions issued by the Supreme Court are as follows:

"...Dr. A.M. Singhvi, learned counsel for the petitioners submits that the petitioners be allowed to withdraw the present petition and renew the request as was made originally before the High Court in OMP (Misc.)(Comm.) No.260 of 2018.

Since the petitioners are withdrawing the present petition, and would now be approaching the High Court, by consent of the parties, we set aside the order dated 23.10.2018 and restore the OMP (Misc.)(Comm.) No.260 of 2018 to the file of the High Court.

Let the parties appear before the High Court on 14.12.2018.

It is made clear that we have not expressed any opinion on the merits or demerits of the matter nor have we dealt with any allegation/counter allegation made by the parties. ..."

8. The record shows that the respondent prior to the order passed by me, dated 23.10.2018, had filed a reply in the matter.

8.1 A perusal of the reply shows that the respondent is resisting the extension of time, principally, on account of exchange that occurred between the representatives of petitioner no.1 and the respondent at a meeting held on 25.9.2018.

8.2 It is the admitted case of parties before me that this meeting was held amongst the representatives of the parties to *inter alia* explore the possibility of settling the dispute amicably.

8.3 It is the respondent's contention that on that date i.e. 25.9.2018, assertions were made by the representative of the petitioner no.1, Mr. Fabio Fagioli, broadly to the effect that the amount offered by the respondent was low and that he would be able to obtain twice the amount in the arbitration proceedings.

8.4 It is also the respondent's assertions that Mr. Fagioli had indicated that he had sway over the learned Arbitrator.

8.5 The petitioners have filed not only a rejoinder denying these assertions made on behalf of the respondent but have also filed an affidavit of Mr. Fagioli.

8.6 The affidavit filed by Mr. Fagioli outrightly denies the assertion made by the respondent that he had any influence over the learned Arbitrator.

8.7 Furthermore, Mr. Fagioli asserts that what he intended to convey was that the offer of the respondent was too low and that in a contested arbitration proceedings the petitioners would be able to secure an amount which was twice the figure offered by the respondent by way of settlement.

9. The narration of events in the pleadings would show that the respondent's real objection is not to the extension of time but qua continuation of the proceedings before the incumbent Arbitrator.

10. I have examined the reply filed by the respondent and, in particular, the aforesaid objection taken therein, the rejoinder and also the affidavit of Mr. Fagioli.

11. A perusal of the aforesaid material would show that there are assertions and counter assertions. There is nothing available on record

which would suggest that the petitioners have a overarching influence on the learned Arbitrator as suggested on behalf of the respondent.

12. Statements, which are not backed by at least some *prima facie* material, in my view, cannot be used to delay arbitration proceedings or seek issuance of directions for substitution of the Arbitrator.

13. Therefore, the submission of the learned counsel for the respondent, which is, that if, extension is to be granted, the incumbent Arbitrator ought to be substituted, cannot be entertained.

14. Insofar as the prayer for extension is concerned, it is not disputed by the counsel for the parties that the learned Arbitrator was appointed by the Supreme Court, as indicated above, in a Section 11 proceedings.

14.1 The order to that effect was passed on 9.12.2016.

15. The learned Arbitrator upon receiving a copy of the order dated 16.12.2016, addressed a letter dated 27.1.2017 to the parties conveying the directions of the Supreme Court.

16. Learned counsel for the respondent concedes that on 15.2.2017, parties mutually agreed to extend the statutory period of twelve (12) months by a further period of six (6) months.

17. It is also not disputed by counsel for the parties that apart from the meeting dated 25.9.2018 to which I have made a reference above, there were three other meetings held prior to that date for exploring a possibility of parties reaching a settlement in the matter. These meetings were held on 30.5.2018, 4.9.2018 and 17.9.2018.

18. I am informed by counsel for the parties that the matter before the learned Arbitrator is positioned at the stage of evidence.

19. Thus, having regard to the time and money invested by the parties and for the foregoing reasons, I am inclined to extend the time for concluding the arbitration proceedings by another twelve (12) months commencing from 17.06.2018.

20. The petition is disposed of in the aforesaid terms.

DECEMBER 14, 2018
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RAJIV SHAKDHER, J

