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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (MISC.) 3/2017 & IA Nos. 10353/2017 and 10355/2017**

OLYMPIC OIL INDUSTRIES LTD. Decree Holder

Through: Mr Jagdeep Anand with Ms
Shakya Sen, Advocates.

versus

PRACTICAL PROPERTIES
PVT. LTD.

..... Judgment Debtor

Through: Mr Ashish Virmani and Ms
Sukriti Gandhi, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.04.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“a) This Hon'ble Court may kindly extend the period/mandate of the Arbitral Tribunal comprising Shri Dinesh Kumar Seth, Advocate, Sole Arbitrator by 12 months in Claim Petition No. 5 of 2016 titled (titled M/s. Olympic Oil Industries Ltd. Vs. M/s. Practical Properties Pvt. Ltd.);”

2. The petitioner claims that the disputes that are the subject matter of the arbitral proceedings in question relate to an Agreement

to Sell dated 09.08.2013 (hereafter ‘the Agreement’) which was entered into between the parties in respect of a plot of land measuring 8833.58 Sq. Yards (7386 Sq. Meters) situated at Block No. 250 Taluka Kalol, Mouje, Ola, Sub-District Kalol, District Gandhi Nagar. The Agreement includes an arbitration clause which, *inter alia*, provided that the arbitral proceedings shall be conducted by a Sole Arbitrator to be appointed by the petitioner.

3. In view of the disputes that are stated to have arisen between the parties, the petitioner invoked the arbitration clause by a notice dated 24.12.2015 and appointed Sh. Dinesh Kumar Seth, Advocate as the Sole Arbitrator for resolution of the subject disputes.

4. The arbitrator entered upon reference and issued a letter dated 31.12.2015 fixing the matter for hearing on 09.01.2016. Admittedly, the time for making the award would have expired on 31.12.2016; however, prior to the said date, the parties by mutual consent extended the time for making the award by a further period of six months. The said period expired on 30.06.2017 and this has led the petitioner to file the present petition.

5. Mr Virmani, the learned counsel appearing for the respondent has opposed the present petition principally on three grounds. First, he submitted that this Court would not have the jurisdiction to entertain the present petition as no part of the cause of action had arisen within the NCT of Delhi – the territorial jurisdiction of this Court. He submitted that in view of Section 2(1)(e) of the Act, this Court would not fall within the definition of a “court” in relation to the

subject disputes. Second, he submitted that the delay in making the arbitral award was attributable to the Arbitral Tribunal as the Arbitral Tribunal had not held any hearing after 28.01.2017. He stated that although a hearing was fixed on 10.03.2017, however, the same was cancelled by the arbitrator. He had then proposed further dates for holding the proceedings. However, the respondent had not received any communication scheduling any further hearings. He submitted that although it has been disclosed in the petition that the Arbitral Tribunal had not fixed any further dates at the request of the learned counsel for the petitioner, the respondent was unaware of any such communications between the Arbitral Tribunal and the learned counsel for the petitioner. Third, he submitted that the arbitrator was located in Mumbai and the arbitral proceedings were conducted in Delhi. He submitted that the same was inconvenient to the arbitrator and this was likely to result in further delays.

6. In addition to the above, Mr Virmani also claims that the arbitrator was not appointed in accordance with law as the petitioner was not the 'Buyer/Service receiver' as per the Agreement and further there was justifiable doubts as to the independence and impartiality of the arbitrator.

7. Mr Anand, the learned counsel appearing for the petitioner countered the aforesaid submissions. He submitted that the delay in conclusion of the arbitral proceedings was attributable solely to the respondent. He referred to a tabular statement indicating the number of hearings held by the Arbitral Tribunal. He pointed out that

seventeen hearings had been held by the Arbitral Tribunal and the proceedings clearly indicate that the respondent had spared no effort to delay the same. He further stated that in addition to the arbitral proceedings, there are other connected proceedings that were being conducted by the arbitrator and, therefore, it would be necessary for the mandate of the Arbitral Tribunal to be extended and it would not be apposite to replace the arbitrator.

8. I have heard the learned counsel for the parties.

9. A perusal of the tabular statement indicating hearings held by the arbitrator do indicate that the respondent is responsible for part of the delay in completion of the arbitral proceedings. The first hearing was held on 09.01.2016 and on that date, the respondent had sought time for moving an application to challenge the jurisdiction of the Arbitral Tribunal. Thereafter, the respondent had filed an application under Section 12 of the Act, which was duly responded to by the petitioner. However, on the second hearing which was scheduled on 14.02.2016, the respondent sought further time to file a rejoinder to the reply filed by the petitioner and, therefore, the said hearing was adjourned. On the third hearing scheduled 06.03.2016, the respondent withdrew its application under Section 12 of the Act. It is also seen that the respondent failed to adhere to the schedule of filing the written statement. On 06.03.2016, the Arbitral Tribunal passed an order directing the parties to file the statement of claim and the statement of defence. However, despite sufficient opportunities, the respondent did not file its written statement as directed.

10. On 09.04.2016 – which was the 4th hearing – the Arbitral Tribunal once again directed the respondent to file the written statement and the next hearing was fixed on 18.05.2016. The respondent failed to file its written statement and instead filed an application under Section 10 of the Code of Civil Procedure for seeking stay of the arbitral proceedings and the matter was adjourned to 06.07.2016. On 06.07.2016, the respondent once again sought an adjournment and sought time to file a rejoinder to its application which was allowed subject to payment of cost of ₹5,000/-. The respondent's right to file a written statement was also closed. The respondent's application under Section 10 of the Code of Civil Procedure was heard on 16.07.2016, 29.07.2016 and 30.07.2016. The application was finally dismissed on 24.08.2016 and the next hearing was scheduled on 26.08.2016. On that date – which was the 9th scheduled hearing – the counsel for the respondent did not appear and consequently, the hearing was adjourned to 07.09.2016 and 08.09.2016.

11. On 07.09.2016, the respondent filed its written statement with an application for condonation of delay and sought time for filing an application for recalling the order dated 06.07.2016 which was then moved on 08.09.2016 (11th hearing). The order closing the right of the respondent to file the written statement was recalled subject to payment of cost of ₹20,000/- and the Arbitral Tribunal fixed further hearings on 06.10.2016 and 07.10.2016. Thereafter, hearings were held on 06.10.2016, 07.10.2016 and 21.10.2016. After hearing the parties, the Arbitral Tribunal directed the respondent to file the

affidavit of evidence by 10.11.2016 and fixed the matter for cross-examination of respondent's witness on 19.11.2016.

12. The respondent did not file the affidavit of evidence but instead moved an application for recall and review of the order directing it to lead evidence. This application was heard on 19.11.2016, which was the 15th hearing. The said application was thereafter disposed of and the next hearing was scheduled on 20.12.2016. This hearing was cancelled at the request of the learned counsel for the respondent and the matter was re-fixed on 07.01.2017. On this date, the respondent once again sought to revive its application under Section 12 of the Act, which was earlier withdrawn by it. Arguments on this application were heard on 28.01.2017 (which was the 17th hearing).

13. It is apparent from the above that the respondent is principally responsible for delay in the arbitral proceedings.

14. Having stated the above, it would also be relevant to note that no hearings have been held after 28.01.2017. Although the Arbitral Tribunal had scheduled a hearing on 10.03.2017, the same was cancelled and no further hearing was fixed thereafter. The learned counsel for the respondent submitted that he had met with an accident and had telephonically informed the Arbitrator requesting that the hearings be scheduled after he was able to resume work. However, it is not disputed that no communication to this effect was sent to the respondent. Thus, there is merit in the respondents grievance that it was kept in the dark as to further proceedings.

15. The respondent's contention that this Court has no jurisdiction

to entertain the present petition is unmerited. The Agreement, clearly, provides the arbitration is to be conducted in New Delhi and the Courts at New Delhi shall have exclusive jurisdiction in respect of the Agreement. Clause 17 and 18 of the Agreement are set out below:-

“17. Any dispute, controversy or claim between the parties hereto arising out of or in connection with this Agreement including any question regarding its existence, validity, interpretation, breach or termination or any default of any obligation hereunder (“Dispute”) shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the rules framed thereunder. The venue and seat of arbitration shall be New Delhi and the arbitration proceedings shall be conducted in the English language. The arbitral proceedings shall be conducted by a sole arbitrator to be appointed by the Buyer/Service Receiver, for which appointment the Supplier hereby gives his irrevocable consent and no objection. The arbitral award shall be final and binding on the Parties hereto.

18. This Agreement shall be governed by and construed in accordance with the laws of Republic of India with exclusive jurisdiction conferred on the courts at New Delhi.”

16. The Supreme Court in *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Private Limited and Ors: (2017) 7 SCC 678* has authoritatively held that the Courts exercising the jurisdiction over the place of arbitration would have exclusive jurisdiction with regard to the arbitral proceedings. In the present case, the Agreement also expressly provides that the Courts in Delhi would have exclusive

jurisdiction and, therefore, the contention that this Court does not does not have jurisdiction to entertain the present petition, is unmerited. (Also see: *Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.* (2013) 9 SCC 32).

17. The contention that the Arbitral Tribunal has not been constituted in accordance with law is also unmerited. The arbitration clause clearly provides that “Buyer/Service receiver” would be appointing an arbitrator. There is no dispute that under the Agreement to Sell, the petitioner was the buyer although referred to as the “vendee”. The contention that since the petitioner has been described as the Vendee and not a Buyer/service receiver, the petitioner is not authorised to appoint an arbitrator is bereft of any merit.

18. The contention that the delay in the arbitral proceedings is attributable solely to the Arbitral Tribunal is erroneous. As noticed above, the respondent is principally responsible for the delay in the arbitral proceedings. However, the Arbitral Tribunal has also not acted with due despatch after 28.01.2017 and, therefore, this Court is of the view that the Arbitral Tribunal is also partly responsible for the delay in completion of the arbitral proceedings. There is no plausible justification for the Arbitral Tribunal to have not held any hearing after 28.01.2017.

19. It is also not in dispute that the arbitrator is located in Mumbai and the arbitral proceedings would have to be conducted in New Delhi

20. Keeping the aforesaid in mind, this Court is of the view that it would be apposite to appoint an independent arbitrator. This is

principally for the reason that the Arbitral Tribunal is also partly responsible for the delay in conduct of the proceedings.

21. In view of the above, this Court appoints Justice Rekha Sharma, (Mobile No. 9871300025) as the Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The Arbitrator shall continue the proceedings from the same stage as reached by the Arbitral Tribunal and on the basis of the pleadings already filed.

22. The parties are at liberty to approach the Arbitral Tribunal for further proceedings. The petitioner shall obtain the arbitral records from Sh. Dinesh Kumar Seth and ensure that the same is filed before the Arbitrator within a period of four weeks from today.

23. The time for making the award is extended by a further period of Nine months from today.

24. The petition is disposed of. The applications also stands disposed of.

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VIBHU BAKHRU, J

APRIL 24, 2018
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