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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.10.2018

+ O.M.P.(MISC.)(COMM.) 302/2018

M/S RATNA INFRASTRUCTURE PROJECTS PVT. LTD.

..... Petitioner

Through: Ms.Kiran Suri, Sr. Adv. with
Mr.Abhay N.Das, Mr.Purvash Buttan,
Ms.Debolina Roy, Ms.Aishwarya Kumar,
Advs.

versus

MEJA URJA NIGAM PRIVATE LIMITED Respondent

Through: Mr.Jayant Mehta, Mr.Aman
Varma, Ms.Anshula Grover, Mr.Parth
Singh Choudhari, Mr.Rahul Khanna, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking extension of time for the Sole Arbitrator to make the Award in the Arbitration Case Nos.1/2013 and 1/2014 pending before him.
2. The disputes between the parties have arisen out of the work of Site Leveling and Infrastructure Works Package for Meja Thermal Power Project awarded by the respondent to the petitioner vide Letter of Award dated 18.05.2010 culminating into the Agreement dated

21.09.2010. Arbitration Case No.1/2013 is with the petitioner being the claimant, while Arbitration Case No.1/2014 is with the respondent being the claimant.

3. This Court by its Judgment dated 11.04.2017 passed in Arb. P. No.537/2016 had terminated the mandate of the Arbitrator appointed by the respondent and appointed the present Sole Arbitrator for adjudicating the disputes that have arisen between the parties.

4. The Arbitrator heard the parties and has reserved the proceedings for Arbitration case No.1/2013 on 30.06.2018 and for Arbitration Case No.1/2014 on 21.10.2018.

5. During the pendency of the above proceedings, the petitioner had filed another application under Section 11 of the Act being Arb. P. No.333/2017, wherein this Court, by an order dated 06.08.2018 appointed the same Sole Arbitrator for adjudicating the disputes raised by the petitioner. The said proceedings have been numbered as Arbitration Case No.1/2018 before the Sole Arbitrator.

6. The petitioner thereafter filed an application praying that the Arbitration Case No.1/2014 be taken up along with Arbitration Case No.1/2018. The Arbitrator disallowed the said prayer vide his order dated 23.08.2018, however, at the same time passed the following directions:-

“8. I have given serious thought to the rival submissions and carefully perused the pleadings and documents filed by the parties. In terms of the directions given by the learned Single Judge of Delhi High Court in Arbitration Petition No. 333 of 2017, this tribunal will have to decide the disputes arising out

of notice dated 06.01.2017 sent by the respondent to the claimant for payment of Rs.118,26,96,228/-. While doing so, the tribunal will also be required to decide the issues of limitation and resjudicata and any other objection which may be raised by the claimant herein (respondent in the new arbitration case). Therefore, even though the disputes in both the arbitration cases i.e. Arbitration Case No. 1 of 2014 and the one which will be registered pursuant to order dated 06.08.2018 may have emanated from the Contract Agreement dated 21.09.2010 read with Letter of Award dated 18.05.2010 and there is a distinct possibility of some issue overlapping, I do not find any justification to defer the hearing of Arbitration Case No. 1 of 2014.

9. Notwithstanding the above conclusion, I am satisfied that pronouncement of final award in Arbitration Case No. 1 of 2014 deserves to be postponed till the hearing in the fresh arbitration is concluded albeit after giving opportunity to the parties to file pleadings, documents and evidence.

10. In the result, application dated 06.08.2018 filed by the respondent in Arbitration Case No. 1 of 2014 for taking up that case with the case arising out of the order dated 06.08.2018 passed by the learned Single Judge of the Delhi High Court in Arbitration Petition No. 333 of 2014 is rejected and it is made clear that the proceedings in the new case will be held independently. It is also directed that the tribunal shall continue and conclude the hearing in Arbitration Case No. 1 of 2014. However, the pronouncement of award in Arbitration Case No. 1 of 2014 will have to await the conclusion of the proceedings in the new arbitration case. This is necessary to avoid the possibility of conflicting awards.

11. The parties to Arbitration Case No. 1 of 2014 as also Arbitration Case No. 1 of 2013 shall file a joint applications under Section 29A(5) of the Arbitration and Conciliation Act, 1996 (As amended) before the competent court for extension of time by 9 months so as to enable this tribunal to conclude the proceedings in the new arbitration case.”

7. The present application has been filed by the petitioner seeking

extension of time for making of the Award in Arbitration Case No.1/2013 and Arbitration Case No.1/2014 pursuant to the observations made by the Sole Arbitrator in the above-mentioned order.

8. Counsel for the respondent submits that while he has no objection in grant of extension of time for making of the Award by the Sole Arbitrator, such Award cannot be indefinitely postponed awaiting the outcome of Arbitration Case No.1/2018, which admittedly is a separate proceeding and in which, though some of the issues may be over-lapping, even the Arbitrator found that the same was not a justification for deferring the hearing of Arbitration Case No.1/2014. He further submits that by deferring his Award, the Sole Arbitrator has granted an opportunity to the petitioner to improve its case before the Arbitrator and cure any shortcomings in its evidence or submissions in Arbitration Case No.1/2014, thereby causing great prejudice to the respondent.

9. Counsel for the respondent further submits that the respondent being aggrieved of the order dated 23.08.2018 passed by the Arbitrator, had also filed an application seeking modification of the said order, however, the same was dismissed by the Arbitrator observing as under:

“5. I have considered the respective arguments. In my opinion it is not necessary to decide the objection raised by Mrs. Kiran Suri to the maintainability of the application filed by the claimant on the ground that the tribunal does not have the jurisdiction to review its order because I am convinced that Order dated 23.08.2018 does not call for modification in terms of the

prayer made by the claimant. The foundation of the dispute raised in the two arbitration cases is Letter of Award dated 18.05.2010 issued by the claimant in favour of the respondent, which was followed by Contract Agreement dated 21.09.2010. The terms and conditions of the LOA and the Contract are required to be interpreted in both the cases and the tribunal will be required to decide whether or not the respondent herein had acted in breach of agreement dated 21.09.2010 and whether termination of the agreement by the claimant herein is legally correct and justified. Therefore, with a view to avoid the possibility of inconsistent awards the tribunal had rightly directed that the pronouncement of award in Arbitration Case No. 1 of 2014 will have to await the conclusion of the proceedings in the new arbitration case i.e. Arbitration Case No.1 of 2018.”

10. On the other hand, learned senior counsel for the petitioner submits that the Arbitrator has rightly decided to postpone the passing of the Award in Arbitration Case No.1/2013 and Arbitration Case No.1/2014 till the conclusion of the proceedings in Arbitration Case No.1/2018 so as to avoid any possibility of inconsistent Awards being passed.

11. I have considered the submissions made by the learned counsels for the parties.

12. In the present case, the Arbitrator has concluded the proceedings in form of hearing the parties as far as Arbitration Case No.1/2013 is concerned on 30.06.2018 and as far as Arbitration Case No.1/2014 is concerned on 21.10.2018.

13. These arbitration proceedings being distinct, have to be decided on their own pleadings and evidence led by the parties in

such proceedings. The Arbitrator himself notes that only the possibility of some of the issues being over-lapping, was not a sufficient ground for deferring the hearing of Arbitration Case No.1/2014. Having arrived at this conclusion, there was no reason for the Arbitrator to have delayed pronouncement of the Award only because Arbitration Case No.1/2018 was also pending before him. What is the effect of the Awards passed in Arbitration Case Nos.1/2013 and 1/2014 on the claims and counter claims of the parties in Arbitration Case No.1/2018 cannot be pre-judged or be a ground for refusing to pass an Award in Arbitration Case No.1/2013 and Arbitration Case No.1/2014 by the Arbitrator. The effect of such Awards has to be judged on their merits when the Arbitrator takes a decision in Arbitration Case No.1/2018 on the basis of pleadings, evidence and submissions made by the respective parties.

14. In view of the observations made above, I extend the time for making of the Award in Arbitration Case No.1/2013 and Arbitration Case No.1/2014 by the Sole Arbitrator by a further period of three months with effect from today.

There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 23, 2018
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