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

+ **O.M.P.(MISC.)(COMM.) 327/2018**

BIKANERVALA FOODS PRIVATE LIMITED..... Petitioner

Through Mr. Rajiv Bansal, Sr. Adv. with Mr.
Arjun Taneja, Ms. K. Singh and Ms.
Aprajita Gupta, Advs.

versus

**ANK RESTOBARS PRIVATE LIMITED THROUGH ITS
DIRECTOR MR. ADITYA AGGARWAL & ORS.... Respondents**

Through Mr. Nikhil Rohatgi and Mr. Shashank
Khurana, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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01.11.2018

I.A. 15067/2018

1. Allowed, subject to the petitioner filing legible copies before the next date of hearing.

O.M.P.(MISC.)(COMM.) 327/2018

2. Issue notice. Mr. Rohatgi accepts notice on behalf of the respondents.

3. Learned counsel for the respondents says that he does not wish to file a reply to the captioned petition.

4. There are two prayers made in the petition. These read as follows:

“a) Clarify whether the provisions of the Amendment Act would be applicable to the proceedings before the Learned Arbitral Tribunal or whether the proceedings before the Learned Tribunal would be governed by the provisions of the Act.

b) In the event this Hon'ble Court is of the opinion that the proceedings before the Arbitral Tribunal are governed by the Amendment Act, then, this Hon'ble Court may be pleased to extend the time for the Learned Arbitral Tribunal to give the Award by further 6 months from the date of the order of this Hon'ble Court on the present application.”

5. Mr. Bansal, learned senior counsel, who, appears on behalf of the petitioner says that the parties are in a quandary as to whether or not the amended Act would apply i.e., in other words, amendments brought in the Arbitration and Conciliation Act, 1996 with effect from 23.10.2015.

5.1 It is in that context that prayer clause (a) is pressed.

6. Mr. Bansal says that the confusion is caused on account of the order dated 27.4.2016 passed by this Court while appointing the Arbitrator, *albeit*, with the consent of parties.

7. In my view, the learned Arbitrator would have to rule on the issue that this Court while exercising powers under Section 29A of the 1996 Act does not have the power to make a declaratory order.

8. The confusion, if any, is caused on account of the observations made by this Court in paragraph 9 of the order dated 27.4.2016 whereby, as indicated above, appointment of the learned Arbitrator is made.

9. Clearly, the learned Arbitrator would have to take into account the binding precedents on the issue including the judgment of the Supreme Court in *Board of Control for Cricket in India vs. Kochi Cricket Private Limited and Ors.*, 2018 SCC Online SC 232.

10. Insofar as the second prayer is concerned, I am inclined to grant further six months for conclusion of the arbitration proceedings and for

O.M.P.(MISC.)(COMM.) 327/2018

rendering the award as I am told that the proceedings are, presently, at the stage of final arguments.

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

12. Needless to say, the fact that counsel for the respondents has not filed a reply on merits, would not tie down the respondents as regard the assertions made in the petition qua the merits of the case.

13. *Dasti.*

RAJIV SHAKDHER, J

NOVEMBER 01, 2018

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