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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **O.M.P.(MISC.)(COMM.) 349/2018**  
**MUMBAI NASHIK EXPRESSWAY LTD. .... Petitioner**  
Through: **Ms.Sadiqua Fatma, Ms.Deepa Sinha**  
**& Ms.Akansksha Kwatra, Advs.**

versus

**NATIONAL HIGHWAYS AUTHORITY OF INDIA (INDIA)**  
**..... Respondent**  
Through: **Mr.Manish K. Bishnoi & Ms.Tanvi**  
**Sapra, Advs.**

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**  
% **19.11.2018**

**I.A. No.15661/2018 (Exemption)**

Allowed, subject to all just exceptions.

**O.M.P.(MISC.)(COMM.) 349/2018**

1. Issue notice. Notice is accepted by Mr. Manish K. Bishnoi, Advocate on behalf of the respondent. The parties have been heard for the limited nature of the relief that has been sought.
2. This petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking extension of time for the Arbitral Tribunal to pass the Award adjudicating the disputes that have arisen between the parties. The Arbitral Tribunal has heard the final arguments of the parties and only the Award remains to be passed.
3. The learned counsel for the respondent submits that the respondent

has filed a Counter Claim in the arbitration proceedings. Though the Arbitral Tribunal had earlier decided to charge the fee as per the Fourth Schedule to the Act, it decided to charge separate fee for the Counter Claim. Relying upon the Judgement of this Court in *Delhi State Industrial Infrastructure Development Corporation Ltd. v. Bawana Infra Development (P) Ltd.*, 2018 SCC OnLine Del 9241, he submits that under the Fourth Schedule the fee of the Arbitral Tribunal is to be fixed on the sum in dispute which includes both the claims and the Counter Claims; no separate fee is payable for the Counter Claim alone. He further submits that this objection was taken before the Arbitral Tribunal, however, the Tribunal has rejected the contention of the respondent vide its order dated 23.01.2018 and has proceeded to direct the parties to deposit separate fee on the Counter Claim as well. As the respondent has not deposited the separate fee, its Counter Claim has not been considered by the Arbitral Tribunal.

4. In my view, the submissions of the learned counsel for the respondent cannot be considered at this stage when the Court is exercising its jurisdiction under Section 29A of the Act. In Section 29A of the Act, the Court is only to consider whether the arbitration proceedings are being expeditiously conducted by the Arbitral Tribunal keeping in mind the mandate of the Act and the time fixed under the said provision. The jurisdiction under Section 29A of the Act is not for scrutinizing any procedural order passed by the Arbitral Tribunal while adjudicating the claims and Counter Claims of the parties.

5. In the present case, admittedly there was no agreement on the fee payable to the Arbitral Tribunal. The Arbitral Tribunal was not appointed upon the intervention of the Court. The Arbitral Tribunal therefore has the

power to fix its own fee. Whether after having fixed such fee, it could have demanded a separate fee for the Counter Claim, would be a question to be determined upon the passing of the final Award by the Arbitral Tribunal. The respondent has also given consent to the extension of time by six months for making of the Award in terms of Section 29A (3) of the Act and as recorded by the Arbitral Tribunal in its order dated 16.03.2018, that is, after the order dated 23.01.2018 of the Arbitral Tribunal sought to be relied upon by the respondent.

6. Be that as it may, as the Arbitral Tribunal has already heard the parties and only the Award remains to be passed, I see no impediment in extending the time for making of the Award by the Arbitral Tribunal by a further period of three months with effect from 3<sup>rd</sup> November, 2018. This order shall, however, not prejudice the respondent in any other proceeding.

7. The petition is allowed in the above terms, with no order as to cost.

**NAVIN CHAWLA, J**

**NOVEMBER 19, 2018/rv**