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

Date of Decision: 25.9.2018

+ **O.M.P.(MISC.)(COMM.) 4/2018**

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION Petitioner

Through: Mr. Abhimanyu Garg with Mrs.
Preety Makkar, Advs

versus

KORE SECURITY SERVICES Respondent

Through: Mr. Ravindra Kumar Raizada, Senior
Advocate with Mr. Vinay Kumar
Bhasin, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

I.A. No. 13112/2018

1. This is an application seeking condonation of delay in filing the rejoinder.
2. For the reasons given in the application, the delay is condoned.
3. The application is disposed of.

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4. This petition has been filed under Section 29A(4) of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The respondent in this matter resists the extension of time sought by the petitioner.
5. The extension of the time sought by the petitioner in this particular matter has somewhat peculiar background.

6. The petitioner and the respondent had entered into a contract dated 02.02.2015 (in short “contract”).
7. By virtue of this contract, the respondent was to provide security and manpower services to the petitioner. The tenure of the contract was 24 months.
8. *Inter alia*, under the contract, the respondent was obliged to make payments to its personnel at the minimum wages prescribed in that behalf. In addition thereto, the respondent was also required to ensure that the personnel engaged were paid EPF and ESI. In sum, the respondent was responsible for ensuring compliance with all labour laws.
9. It appears that the petitioner received complaints from the personnel engaged by the respondent with regard to non-payment of salaries and personnel being made to work overtime.
10. Consequent thereto, an inquiry was held by the petitioner which, according to it, lent credence to the allegations levelled against the respondent. As a result of this development, on 22.04.2016, the petitioner terminated the contract.
11. Since the respondent had furnished a bank guarantee to the petitioner and it was apprehended by it that same would be encashed, the respondent took a decision to file a petition under Section 9 of the 1996 Act, *albeit*, before the Additional District Judge in Rohini Court, Delhi. This petition was filed by the respondent in and about 26.04.2016.
12. I am informed by counsel for the parties that an injunction was granted by the learned ADJ *vis-a-vis* encashment of the bank guarantee which was vacated by this Court upon the petitioner carrying the matter by way of appeal to this Court.

13. It is however important to note that the learned ADJ vide its order dated 27.04.2016 had directed the petitioner to initiate the process of appointment of an arbitrator.

14. Consequent thereto, on 06.05.2016, the petitioner appointed, one, Mrs. Janak Juneja, a retired IAS officer as an Arbitrator.

15. Evidently, on account of allegations raised by the respondent, Mrs. Janak Juneja decided to withdraw from the arbitration proceedings. This was conveyed by Mrs. Janak Juneja vide a communication dated 14.09.2016.

16. As a result of the aforesaid circumstance, the petitioner proceeded to appoint another arbitrator, that is, one, Mr. Ramesh Narayanaswami. Mr. Ramesh Narayanaswami is also a retired IAS officer.

17. Both these aforesaid appointments were made by the petitioner in terms of Article 58 of the contract obtaining between the parties.

18. The record shows that the respondent had filed even before the appointment of the Mr. Ramesh Narayanaswami a petition under Section 11 of the 1996 Act for appointment of an independent Arbitrator. This petition came to be numbered as Arb. Petition No. 277/2016. The petition was disposed of by this Court vide judgment dated 20.10.2016.

18.1 The Court after noticing the objection of the respondent came to the conclusion that since the petitioner's Managing Director had been given the authority to appoint an Arbitrator and there was nothing on record to show that he was not independent, the relief sought in the petition could not be granted.

18.2 However, an observation was made by the Court, which is, that the learned Arbitrator would have to adhere to the mandate of the section 12 of the 1996 Act.

19. The net effect of the judgment passed by this Court was that Mr. Ramesh Narayanaswami's appointment was sustained.

20. The learned Arbitrator, thereafter, held his first hearing on 03.11.2016. At this hearing, as per the record placed before me, the respondent, i.e. the original claimant was represented by Mr. Kunal Joshi.

20.1 It appears, at this hearing, Mr. Kunal Joshi informed the learned Arbitrator that since his father, Mr. K.C. Joshi, was not keeping good health, he had gone to USA to be with his daughter.

20.2 Evidently on that date, the learned Arbitrator also made the necessary disclosures in terms of Schedule 5, 6 and 7 of the 1996 Act which were handed over to representative of the parties.

20.3 The arbitrator also fixed a lump sum fees of Rs. 1,00,000/- to be paid in the matter, with a caveat that it would be shared equally by the parties. The matter was fixed for further proceedings on 07.12.2016.

21. On 07.12.2016, the matter was adjourned once again to 29.12.2016. The petitioner was represented by an Advocate on that date. The Advocate was directed to file a vakalatnama in the matter.

22. On 29.12.2016, a stand was taken on behalf of the respondent that the appointment of learned Arbitrator was proceeded with undue haste.

22.1 The learned Arbitrator after making the note of assertions and counter assertions made before him, none of which are relevant at this juncture, proceeded to fix a further hearing in the matter on 20.01.2017.

23. Pertinently, there is nothing on record to show as to whether or not proceedings were held on 20.01.2017.

24. What, however, is available on record is the proceedings of 10.02.2017. On 10.02.2017, the learned Arbitrator fixed the schedule for

filing the statement of claim, reply and counter claim, rejoinder and reply to counter claim. The matter was, thereafter, listed for further proceedings on 29.03.2017.

25. Concededly, statement of claim was not filed by the respondent, despite an opportunity being given in that behalf. Resultantly, the learned Arbitrator gave further opportunity and fixed the matter for further proceedings on 20.04.2017. The result was no different as neither had the respondent filed its statement of claim nor had the petitioner filed its counter claim.

26. Accordingly, on 20.04.2017, the learned Arbitrator after recording the dismal conduct of the respondent in not filing its statement of claim gave time to the petitioner to file their counter claim, *albeit*, by 26.05.2017. The matter came to be fixed for further proceedings on 02.06.2017. On that date, true to its earlier approach the respondent failed to file its statement of claim.

26.1 Sadly, though, the petitioner, who had been given an opportunity to file a counter claim, it also failed to comply.

26.2 Resultantly, on that date, the learned Arbitrator took the view that the Arbitration proceedings had to be terminated. In this behalf, recourse was taken by the learned Arbitrator to the provisions of Section 25(a) of the 1996 Act.

26.3 I may only indicate here that the petitioner had at hearing held on 02.06.2017, sought some more time to file a counter claim.

26.4 The learned Arbitrator, however, was of the opinion that the counter claim could only be filed if a statement of claim is filed by the claimant followed by the statement of defence. In other words, the view taken by the

learned Arbitrator was since the pre-requisite step of filing a statement of claim had not been taken, the counter claim could not be filed by the respondent. The learned Arbitrator, thus, proceeded to terminate the arbitration proceedings.

27. There is no dispute that a review application was filed by the petitioner for recall of order dated 02.06.2017. In the review application, notice was issued to the respondent.

27.1 The learned Arbitrator after hearing the parties passed an order dated 05.10.2017 recalling its order to the extent he had closed the arbitration proceedings as regards the counter claim which the petitioner was desirous of having adjudicated upon.

28. I am informed by counsel for the parties that since 05.10.2017, no proceedings have been held before the learned Arbitrator. The reason, I am told, the proceedings have come to such a pass is that the 12 months statutory period came to an end on 07.10.2017.

29. Apparently, the petitioner did write to the respondent on 13.10.2017 to extend time for conclusion of arbitration proceedings. A copy of the letter has been placed on record which is accompanied by copies of courier receipts and the tracking report.

29.1 On being queried, counsel for the respondent did concede that the respondent had not responded to the said request made by the petitioner for extension of time.

30. In view of the lack of cooperation by the respondent, the petitioner has moved the aforesaid petition. This petition was filed by the petitioner in and about 19.12.2017.

31. Arguments in support of the petitioner's case have been advanced by

Mr. Abhimanyu Garg; while on behalf of the respondent submissions have been made by Mr. Ravindra Kumar Raizada.

32. Counsel for the petitioner says that in the given facts and circumstances, which have been set out above by me, this Court should extend time notwithstanding lack of corporation by the respondent.

33. On the other hand, Mr. Ravindra Kumar Raizada, who, appears for the respondent, has brought to my attention the letter dated 06.05.2016.

34. Based on the contents of the said letter, whereby, Mrs. Janak Juneja was appointed as the Arbitrator, it was contended by Mr. Raizada that the said arbitrator was appointed by the petitioner on a demand made by the respondent *vis-a-vis* its claims. The contention being that there was no demand by the petitioner for appointment of an Arbitrator and therefore, the learned Arbitrator would have no jurisdiction to rule upon the counter claims which the petitioner seeks to prefer before the learned Arbitrator.

35. As indicated above, in my narration, since Mrs. Janak Juneja had withdrawn from the arbitration proceedings a fresh appointment was made, which resulted in the appointment of Mr. Ramesh Narayanaswami.

36. The sole question that arises for consideration is as to whether the learned Arbitrator in the facts and circumstances of this case could continue with the arbitration proceedings notwithstanding the lack of consent by the respondent.

37. This Court, at this juncture, is not concerned with whether or not the learned Arbitrator would have jurisdiction to entertain the counter claim sought to be preferred by the petitioner.

38. The facts and circumstances detailed out above do show that the learned Arbitrator had, in fact, given the petitioner on 20.04.2017 an

opportunity to file a counter claim. The petitioner, however, failed to do the needful and renewed its request qua the same on 02.06.2017.

39. On 02.06.2017, however, the learned Arbitrator proceeded to terminate the arbitration proceedings, despite a request being made by the petitioner, on that date, that some more time be given to file a counter claim on account of the view taken by him based on his interpretation of the provisions of 1996 Act that a counter claim could only be filed once the statement of claim and the reply had been filed. This view, however, the learned Arbitrator seems to have revisited in his order dated 05.10.2017.

40. The order dated 05.10.2017 has not been assailed by the respondent, therefore, as things stand today, the learned Arbitrator has taken a view that the petitioner can prefer a counter claim.

41. Mr. Ravindra Kumar Raizada, who, appears for the respondent, says that there is nothing on record to show what were, in fact, the counter claims of the petitioner.

42. In this behalf, I may only allude to two letters to which my attention has been drawn by the counsel for the petitioner. These are letters dated 22.04.2016 and 09.05.2016. Briefly, these letters bring to fore the petitioner's grievance of having to pay salaries for the period 01.04.2016 to 21.04.2016 to the personnel engaged by the respondent.

43. This, perhaps, is one of the grievances apart from the other grievances that the petitioner may have against the respondent, and therefore, the arguments raised on behalf of the respondent that the counter claim is speculative is, perhaps, not an accurate submission.

44. Be that as it may, this is an aspect which the learned Arbitrator will deal with once counter claim (now, claim) is filed by the petitioner.

45. Thus, having regard to the foregoing discussion and given the peculiar facts and circumstances which arise arising in the instant case, I am inclined to extend the time for conclusion of the Arbitration proceedings.

46. Accordingly, time for concluding the arbitration proceedings is extended till 30.09.2019. The time will commence, however, from 05.10.2017.

46.1 For this purpose, counsel and their parties shall appear before the learned Arbitrator on 11.10.2018 at 3:00 pm.

46.2 In case, the said date is not convenient to the learned Arbitrator, he will fix another date which will be proximate to the date fixed by the Court.

46.3 The petitioner will carry its statement of claim on that date of hearing.

47. Needless to say, the learned Arbitrator will give an opportunity to the respondent to file its reply/statement of defence.

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

RAJIV SHAKDHER, J

SEPTEMBER 25, 2018

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