

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L.) NO.973 OF
2019**

Addhar Mercantile Private Limited	..Petitioner
Vs.	
Shree Jagdamba Agrico Exports Pvt. Ltd.	..Respondent

Mr.Arnab Ghosh with Ms.Alvia Crasta for Petitioner.
Ms.Bimal Rajashekhar i/b. Mr.Ashwin Shanker for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 28th AUGUST, 2019

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for the respondent.

2. This is a petition filed under Section 29A of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the petitioner has prayed for extension of the mandate of the arbitral tribunal to conclude the arbitral proceedings and make an award. The arbitrator came to be appointed in pursuance of the order dated 3 April 2019 passed by this Court (S.C. Gupte, J.) in Commercial Arbitration Petition No.34 of 2016 wherein the court recorded that by consent of parties, the impugned order dated 15 March 2016 is set aside and Mr.Harsh Pratap, Advocate, is appointed as a sole arbitrator to adjudicate upon disputes and differences between the parties. Paragraph 2 of the said order is relevant which reads thus:-

"2 Accordingly, by consent of parties, the impugned order dated 15 March 2016 is set aside and Mr.Harsh Pratap, Advocate, is appointed as a sole arbitrator to adjudicate upon disputes and differences between the parties forming the subject matter of the present reference. The arbitrator shall treat the pleadings and evidence filed by the parties as their respective pleadings and evidence in the reference and shall hear submissions of the parties. The arbitrator shall endeavour to conclude the reference and declare his award as expeditiously as possible and in any case within four months from today. It is clarified that the reference is remitted only to the extent of the Respondent's claims awarded by the learned arbitrator, which have been the subject matter of challenge in the present arbitration petition. The bank guarantee submitted by the Petitioner in pursuance of the order dated 1 November 2018 shall stand discharged and be returned to the Petitioner. The Petitioner assures the court that it has the financial wherewithal to discharge any liability that may arise from the award sought by the Respondent."

3. It is not in dispute that a preliminary meeting was held by the learned arbitrator. It is quite apparent that the proceedings before the earlier arbitral tribunal were filed in this Court and the parties were to take appropriate steps to submit all papers and proceedings before the newly appointed arbitrator. It is informed that the papers and proceedings are now submitted to the learned arbitrator. Learned arbitrator was directed to consider the pleadings and evidence filed by the parties before the erstwhile arbitral tribunal and after hearing submissions of the parties, proceed to make an award. The Court had directed that an endeavour would be made by the learned arbitrator to conclude the arbitral proceedings as expeditiously as possible and in any case within four months from the date of the said order.

4. Learned Counsel for the respondent however has two fold objections. Firstly, there was a delay on the part of the petitioner in approaching the arbitral tribunal after the order dated 3 May 2019 passed by this Court in Section 34 petition. It is submitted that there is no satisfactory explanation to the delay. Secondly it is submitted that there is clear direction that the arbitration proceedings be concluded within four months and the time has already lapsed. It is on these grounds learned Counsel for the respondent would submit that the petitioner is not entitled for extension as prayed for.

5. Having perused the averments as made in the petition and having heard learned Counsel for the parties, I am not persuaded to accept the submissions as urged on behalf of the respondent. This firstly for the reason that admittedly record of the arbitral proceedings which culminated into the earlier award, as stated in the order dated 3 May 2019 passed by this Court in commercial arbitration petition No.34 of 2016, was required to be submitted to the newly appointed arbitrator. It appears that this has taken sometime. Now the record is before the arbitral tribunal.

6. In regard to the contention as urged on behalf of the respondent that the award was required to be pronounced within four months from the date of the said order and therefore no further extension can be granted, also cannot be accepted. The orders which are passed by the court clearly record that an endeavour be made to conclude the arbitral proceedings. In any case these orders are subject to the provisions of Section 29A of the Act and it cannot be accepted that the directions of this Court in any manner displace the

mandate of Section 29A of the Act. Thus such an objection as urged on behalf of the respondent would be required to be rejected.

7. In these circumstances and considering the fact that by consent the earlier award was set aside and now the learned arbitrator is seized with the proceedings, it is in the interest of justice that the petition is allowed. It is allowed in terms of prayer clause (a) which reads thus:-

“(a) That this Honourable Court be pleased to extend the term of the Learned Arbitrator for hearing the present dispute between the parties and to prepare and pass his award by a further period of four (4) months from date of passing of the order on such terms and conditions as this Hon'ble Court may deem fit and proper.”

8. The parties shall co-operate in the early disposal of the arbitral proceedings.

9. All contentions of the parties are expressly kept open.

10. Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]