

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 1171 OF 2019**

Electropath Services (India) Pvt Ltd	...Petitioner
<i>Versus</i>	
Maharashtra State Electricity Distribution Company Limited	...Respondent

Mr Yakshay Chheda, *with Ms Devanshi Sethi, i/b Pariman Law Associates, for the Petitioner.*
Ms Prerna Gandhi, *i/b DSK Legal, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 25th November 2019

PC:-

1. The petition is under Section 29-A of the Arbitration and Conciliation Act 1996. The petitioner executes turnkey contracts relating to electricity distribution. The respondent is the Maharashtra State Electricity Distribution Company Limited. The contract in question is dated 31st January 2014. It relates to certain works to be done in the Baramati Zone, Pandharpur Division.

2. Disputes arose between the parties. The agreement contains an arbitration clause. On 30th December 2016 the petitioner

invoked arbitration. Between March and April 2018 each side nominated an arbitrator and the two arbitrators nominated a presiding arbitrator.

3. The arbitration commenced and there were several claims and counter claims. Evidence was required. In March 2018, the petitioner sought to amend the statement of claim. That amendment application was allowed and on 8th May 2018, the petitioner filed an amended statement of claim. There was some delay in evidence because the petitioner's first or primary witness's wife was unwell and required surgery. In the meantime around mid-August 2018, one of the arbitrators took ill and the hearing had to be adjourned. Between August and December 2018, the claimant's witness was cross-examined but in early January 2019 the presiding arbitrator withdrew. He tendered his resignation on the ground of his own ill health. Another arbitrator was appointed as a presiding arbitrator.

4. On 30th April 2019 this Court granted an extension of six months from 1st March 2019.

5. After that, the claimant filed yet another amendment application to the statement of claim. This was opposed and fully argued. The amendment application was allowed on 3rd July 2019. The claimant amended the statement of claim. The respondent sought some time to take instructions saying that it was considering a challenge to the order allowing the amendment. There does not seem to have been any challenge or appeal under Section 37.

Instead, on 13th August 2019, the respondent sought an extension to file its amended statement of defence. That was ultimately done on 27th August 2019.

6. Hence this application for an extension of time.

7. The application is opposed on behalf of the respondent. The ground of opposition is most curious. I am told that the second amendment sought in June 2019 by the petitioner is contrary to the contract and it could not have been allowed. That is evidently not a ground to oppose this petition for an extension of the arbitral mandate. In fact, that amendment application has been allowed by the arbitral tribunal. The respondent sought time saying it was considering a challenge. It never challenged that order. It cannot by this roundabout method of opposing an arbitral mandate extension petition effectively nullify not only the amendment application allowed by the arbitral tribunal, but undermine the entire arbitration itself. There is absolutely no substance to this ground of opposition and it is a one that ought never to have been taken.

8. It also overlooks that far from challenging the order allowing the amendment application, the respondent has itself filed an amended statement of defence. The order allowing the amendment has attained finality.

9. Now this amendment is likely to have all manner of consequences. There may be additional issues/point for determination that need to be cast or framed. It is entirely possible

that the claimant will need to lead additional evidence (depending on what stand the respondent has taken in its additional statement of defence). I estimate that the tribunal will need at least another six to eight months to complete the work. In saying this, I must have regard also to the fact that the arbitration does not seem to be proceeding on a day-to-day basis. Wherever there are three arbitrators, coordinating dates is always slightly more difficult. For this reason I will extend the time till end of August 2020.

10. The petition is disposed of. There will be no order as to costs.

(G. S. PATEL, J)