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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1442 OF 2019

Supreme Kopargaon Ahmednagar Tollways Private Limited	...Petitioner
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr Rohan Savant, *with Deepa Bisht and Chirag S, i/b Tushar
Goradia, for the Petitioner.*
Mr Himanshu Takke, *AGP, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 22nd November 2019

PC:-

1. The application is under Section 29-A of the Arbitration and Conciliation Act 1996. It is most vigorously opposed by Mr Takke.

2. By an order dated 19th April 2018, this Court appointed Mrs Justice Nishita Mhatre (Retired), former Acting Chief Justice of Calcutta High Court as a sole arbitrator to decide the disputes and differences between the parties arising from a build, operate and transfer agreement dated 19th April 2007, a supplementary agreement dated 8th January 2008 (between the respondent and the predecessor-in-title of the petitioner), and a second supplementary agreement dated 4th August 2011.

3. Mrs Justice Mhatre entered upon a reference to arbitration on 19th April 2018.

4. Before her pleadings were filed. The respondent filed a counter claim. There was a reply to that counter claim. Parties consented initially to an extension of six months on 19th July 2019. At that time the learned sole arbitrator directed the petitioner to file its affidavit in lieu of examination-in-chief and the matter was adjourned to 2nd August 2019.

5. This is the grievance in opposition today and it is argued that till date the petitioner has done nothing towards the fulfilment of those directions.

6. What the argument overlooks is that the claimant had in the meantime applied for an amendment to the statement of claim. This amendment application was opposed principally on the grounds that the petitioner could not straightaway add to its claim. It had to follow the contractual procedure by first approaching the designated officer with the claim. If that claim was declined then the further procedure would have to follow, and only if it was refused fully could such a claim be presented to the arbitrator. Until these decisions were taken, the claim could not straightaway said to be a dispute arising under the contract and would therefore not be arbitrable.

7. The learned sole arbitrator heard this application (evidently a species of interim application that lies outside Section 17) and, by

her order dated 6th September 2019, directed the petitioner claimant to submit some of its claims in the amendment application to the executive engineer. There were further directions to the executive engineer to consider those. Then the contractual procedure was to be followed by escalating those claims on such refusal to the chief engineer. Finally there was a direction that if the claimant failed to approach the executive engineer, within the time granted by the learned sole arbitrator, it would be deemed to have given up these claims.

8. Mr Savant states that an application has in fact been made to the executive engineer, has been duly refused, has been taken higher to chief engineer and that too has been refused on 25th October 2019.

9. The opposition to the present time extension petition is, to my mind, not one that I can accept. Before the learned sole arbitrator, progress in the trial is delayed because of the amendment application, one she had to decide. I have no manner of doubt that once the conditions preceding or precedent to allowing of the amendment application have been fulfilled, the respondent State will now have to file its reply to the amended statement of claim. Further or additional issues will have to be settled and it is only thereafter that the evidence affidavit of the petitioner can be filed.

10. This does not however mean that the petitioner cannot be put to terms under Section 29-A(5) of the Arbitration Act. That subsection requires the Court to ensure that there is a sufficient cause

for the extension; that requirement is satisfied. The sub-section also says that the Court may in his discretion impose terms and conditions. I am not inclined to place any monetary or financial conditions on either of the parties but I will insist that before the learned sole arbitrator the petitioners will not seek any adjournments barring an absolute emergency. They will adhere to the time schedule fixed including for all filings. I am myself not fixing that time schedule because it is the learned sole arbitrator who is best placed to assess how much time will be required having regard to the nature of the disputes and volume of the material that is before the tribunal.

11. Time is accordingly extended subject to these conditions for a period of one year from today.

12. The petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)