

A.No.1531 & 1527 of 2019**R.SURESH KUMAR, J.**

The prayer sought for in both these application is to grant a period of 12 months extension of time.

2. Heard Mr.K.Anbarasan, learned counsel appearing for the applicant and Mr.Krishna Srinivasan, learned counsel appearing for the respondent.

3. Both the learned counsel submitted that, before the Arbitrator, the stage of the arbitration proceedings is that, the pleadings of both sides have been completed and examination of witnesses have to be commenced.

4. They would also submit that, the arbitration proceedings got delayed, since there has been a moratorium order and whether that would be applicable to these parties or not since engaged for some time, that precluded the Arbitrator for some time to proceed further with this arbitration proceedings, that is how the arbitral proceedings got delayed and the mandate of one year period statutorily given to the Arbitrator has already been over.

5. At this juncture, the learned counsel appearing for both sides submitted that, there has been a claim and counter claim between the parties and in this regard, if this Court is inclined that, the mandate of the Arbitrator is to be extended, let the Arbitrator decide both the claim and the counter claim of the parties simultaneously and in this regard, the learned counsel appearing for the respondent has relied upon the decision of the National Company Law Appellate Tribunal, New Delhi, in the matter of Jharkhand Bijli Vitran Nigam Ltd. Vs IVRCL Ltd. (Corporate Debtor) & Anr, which read thus:

"As the claim of the Corporate Debtor can be determined only after determination of counter claim made by the Appellant in the same very Arbitral proceeding and if counter claim or part of it is set off with the claim made by the Corporate Debtor, we are of the view that both the claim and the counter claim of parties should be heard together by the Arbitral Tribunal in absence of any bar under Insolvency and Bankruptcy Code, 2016."

6. Insofar as the said proposition is concerned, there is no quarrel between the parties and both the learned counsel made submission that, while extending the mandate of the Arbitrator for further period, it may be observed by this Court that, the Arbitrator can decide both the claim as well as counter claim of the parties simultaneously.

7. I have considered the said submission made by the learned counsel appearing for both sides and have gone through the materials placed before this Court.

8. The reasons adduced for getting delayed the arbitration proceedings and for the requirement of the extension of the mandate for further period is to be accepted and in that, view of the matter, this Court is inclined to pass the following order:

"That the mandate of the Arbitrator in the matter of BHEL Letter No:PSSR:SCT:1321, dated 16.11.2017 and BHEL Letter No:PSSR:SCT:1198, dated 24.11.2017 is hereby extended for a period of 12 months from 10.04.2019, within which time, it is expected that, the arbitration proceedings be concluded and the final award be passed."

9. It is observed that, in view of the stand taken by both the parties, the claim as well as the counter claim raised between them can be decided by the learned Arbitrator simultaneously.

10. With these observations, the mandate is extended as set out above. Accordingly, both these applications are disposed of.

05.04.2019

tsvn

Note: Issue copy of the order on 08.04.2019

R.SURESH KUMAR, J.

tsvn



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