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

+ **O.M.P.(MISC.)(COMM.) 256/2019**

ONGC PETRO ADDITIONS LIMITED

..... Petitioner

Through: Mr.Somiran Sharma, Mr.K. R.
Sariprabhu and Mr.Aditya Shandilya
and Mr.Tushar Bhardwaj, Advs.

versus

FERNAS CONSTRUCTION CO. INC

..... Respondent

Through: Mr.C. D. Mulherkar, Mr.Shailabh
Tiwari and Mr.Chanakya Dwivedi,
Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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25.09.2019

1. This is a petition filed by the petitioner under Section 29 A with the following prayers:

“(a) Pass an order extending the time limit for passing the arbitral award by 18 months from 24.06.2019 with liberty to seek further extension, if required;

(b) Any other or further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The facts as noted from the petition are that : pursuant to contract executed between the petitioner and FERNAS India Pvt. Ltd disputes have arisen between the parties. It may be relevant to state here that the respondent is a company fully incorporated under the laws of Turkey.

3. In view of the fact that disputes have arisen between the parties, petitioner herein invoked the Arbitration Agreement vide notice dated 3rd May, 2018, against FCIPL and the respondent herein. An Arbitral Tribunal was also constituted. The respondent herein had approached this Court by

filling Civil Suit which was in the nature of an anti-arbitration injunction suit being CS (COMM) 954/2018 seeking the following prayers:-

“xxx xxx xxx

2. *The suit is filed seeking the following reliefs:-*

(a) A decree declaring that the obligations under the Guarantee no longer subsist and/or stand discharged;

(b) A decree declaring that the notice of arbitration dated 03.05.2018 is void and unenforceable insofar as the Plaintiff is concerned;

(c) A decree of permanent injunction restraining the Defendant from proceeding further with the notice of arbitration dated 03.05.2018 insofar as the Plaintiff or from initiating any other arbitration proceedings against the Plaintiff;”

4. *Vide* order dated 25th April, 2019, the suit was decided by a coordinate bench of this Court in terms of the following conclusion:-

*“23. In my opinion, the aforementioned two judgments of the Supreme Court in **Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc.(supra)** and; **Cheran Properties Limited vs. Kasturi and Sons Limited and Ors (supra)** are clearly applicable to the facts of the present case. The plaintiff is bound by the arbitration clause.”*

5. The respondent herein had taken the said order, in appeal, before the Supreme Court. I have been informed that the Supreme Court has dismissed the SLP. Pursuant to the constitution of the Tribunal, the proceedings had commenced before the Arbitral Tribunal. It also noted that the FCIPL, the Indian subsidiary of the respondent, was taken before NCLT and the NCLT has appointed an Interim Resolution Professional (hereinafter referred to as

“IRP”). With the appointment of the Interim Resolution Professional, a moratorium comes into effect under Section 14(1) of the Insolvency and Bankruptcy Code, 2016. Because of the moratorium which interdicts institution and continuation of suits or proceedings against the corporate debtor, i.e. FCIPL, the petitioner herein had filed an application before the Tribunal with the following prayers:-

“a) declare that for the reasons stated in the notice invoking arbitration and in the foregoing paragraphs of this application this Tribunal is competent and has jurisdiction to adjudicate the disputes raised by the Claimant against the Respondent No.2 in terms of the contract dated 19 April, 2011 executed between Claimant and the Respondent No.1;

b) in view of moratorium against the Respondent No.1, the Claimant is allowed to prosecute its claim against Respondent No.2 as the sole Respondent in the present proceeding and permit the Claimant to file Statement of Claim against the Respondent no.2

c) any other further order(s) as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

6. The said application was decided by the Tribunal *vide* its order dated 10th May, 2019, whereby the application was disposed of in the following manner:-

“xxx xxx xxx

Mr. Prabhu, counsel for the claimant submits that the pending application dated 29.08.2018 needs no further consideration in view of the judgment of the Hon’ble High court of Delhi which is in favour of the claimant. The Application stands disposed off.”

7. This application has been filed by the petitioner under Section 29A of the Arbitration and Conciliation Act, seeking extension of time limit for

the Arbitral Tribunal to complete its proceedings and render its award within 18 months effective from 24th June, 2019. An objection has been raised by the learned counsel for the respondent that in view of the fact that the IRP has been appointed, and a moratorium has come into existence, no proceedings against the respondent can continue. It is also his submission that cleverly the petitioner had not made the FCIPL a party before this Court. In other words, it is the submission without FCIPL being a party in these proceedings, this application cannot be allowed. *Prima facie*, I am unable to agree with that submission made by the learned counsel for the petitioner for the reasons: (1) in view of the fact that a coordinate bench of this Court in CS(COMM) 954/2018, *vide* its order dated 25th April, 2019, which has been reproduced above, clearly held that the respondent herein shall get covered under the relevant Arbitration clause, and (2) it is the case of the petitioner that it cannot proceed against the FCIPL in view of the appointment of an IRP by the NCLT. These aspects justify, the absence of FCIPL as a party respondent. In any case liberty is with the respondent to contend so, before the Arbitral Tribunal.

8. Keeping in view that even the claim petition has not been filed by the petitioner till date and also keeping in view the averments made in the para 22 of the petition, I deem it appropriate to extend the time for the Arbitral Tribunal to complete the proceedings and render award by 18 months effective from 24th June, 2019.

9. The petition is disposed of.

V. KAMESWAR RAO, J

SEPTEMBER 25, 2019/bh