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

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Date of decision: 08.11.2019

+ O.M.P.(MISC.)(COMM.) 305/2019

ISGEC HEAVY ENGINEERING LIMITED Petitioner

Through Mr. Ashish Verma, Advocate.

versus

BHUSHAN ENERGY LIMITED Respondent

Through Mr. Jayant Mehta, Mr. Arvind
Jhapliyal and Mr. Manik Ahluwalia,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 29A (5) of the Arbitration and Conciliation Act, 1996 seeking extension of time for completion of the Arbitral Proceedings and passing of the Award.
2. The Arbitral Tribunal entered upon reference on 22nd March, 2017 and thereafter certain proceedings have been held. The parties submit that the proceedings are at the stage of recording of the evidence.
3. However, on 8th January, 2018 insolvency process was initiated against the respondent vide order of the NCLT. The moratorium period of 180 days was imposed. On 6th June, 2018, NCLT granted extension of 90 days beyond the stipulated period of 180 days and extended the moratorium period.

4. On 26th October, 2018, the Tribunal agreed to recommence the Arbitration Proceedings and the date of hearing was fixed.
5. Vide order dated 29th January, 2019 the Tribunal passed an order holding that the proceedings could continue. The time period was extended by 6 months by mutual consent of the parties.
6. Vide order dated 4th April, 2019 the NCLT on clarification sought, passed an order granting stay against the Arbitral Proceedings. The stay was finally vacated on 30th May, 2019 by the NCLT.
7. By an e-mail dated 27th June, 2019 the Tribunal informed the parties that the mandate of the Tribunal has expired on 7th June, 2019 and requested for further extension of time.
8. Learned counsel for the petitioner prays that time may be extended for a period of 9 months from today.
9. Mr. Jayant Mehta, learned counsel for the respondent submits that the CIRP against the respondent Company was concluded successfully. In terms of the Resolution Plan, a total payment of Rs. 805 crores has been made.
10. Additionally, subject to market condition, TSL has also proposed to infuse fresh equity worth Rs. 370 crores in order to recommence business operation of the respondent Company.
11. Learned counsel for the respondent further submits, owing to the aforesaid reasons, the total cost of the Arbitration in term of the Arbitral Proceedings, will impose an additional financial burden on the respondent Company. Respondent Company is not in a position to endure, given the financial constraints referred above. Learned counsel for the respondent submits that the respondent is thus not able to afford the fee of the Arbitral Tribunal.

12. The matter is at the stage of evidence. Having heard learned counsels for the parties, this Court is of the view that there is some merit in the contention of the learned counsel for the respondent.

13. With the consent of the parties, time for completion of proceedings and passing of the Award is hereby extended by a period of 9 months with effect from 8th November, 2019. The period between 7th June, 2019 till date is regularized.

14. The respondent is at liberty to make a request to the Arbitral Tribunal to fix a reasonable fee in light of what has been stated above.

15. The Tribunal is requested to consider the request of the respondent favourably.

16. Petition is disposed of in the aforesaid terms.

NOVEMBER 08, 2019

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JYOTI SINGH, J

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