

\$~9

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

Date of Decision: 29.1.2019

+ **O.M.P.(MISC.)(COMM.) 285/2018**

GPR POWER SOLUTIONS PVT. LTD. Petitioner

Through: Mr. Sumit Kumar, Adv

versus

HIRANMAYE ENERGY LTD. (FORMERLY KNOWN AS INDIA
POWER CORPORATION (HALDIA) LTD. Respondent

Through: Mr. Rishav Banerjee with Mr. Sarthak
Guru and Mr. Kumar Vivek Vibhu,
Adv

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. On 27.11.2018, I had recorded the reasons, as to why the respondents were resisting the request made by the petitioner to extend time for conclusion of Arbitration proceedings.

2. The order passed on 27.11.2018 is self-explanatory and hence is set forth hereafter:-

“1. Mr. Sarthak Guru, who, appears for the respondent, seeks time to file the award.

2. I have been shown the proceedings dated 16.08.2018 which took place before the learned Arbitrator.

3. A perusal of those proceedings would show that not only counsel for the parties but also the Arbitrator were cognizant of the fact that the time for pronouncing the award was to expire on 19.08.2018.

4. *The proceedings sheet shows that since the respondent sought two days time to file its written submissions and the learned Arbitrator acceded to the said request.*

5. *It is in this background that the learned Arbitrator passed the award on 25.08.2018, albeit, after her mandate had already expired.*

6. *It appears that since the learned Arbitrator has ruled against the respondent, the respondent seeks to contest the captioned application.*

7. *It is pertinent to note that a petition under Section 34 of the 1996 Act has not been filed as yet.*

8. *Since the application for extension raises a legal issue, it will have to be decided in the first instance. However, clearly, it is the respondent's representation which led to the aforesaid situation coming to pass.*

9. *Renotify the matter on 29.01.2019."*

3. Mr. Rishav Banerjee, who, appears on behalf of the respondent says that the award dated 25.08.2018 is null and void, as it was passed by the learned Arbitrator after the time prescribed under Section 29A (1) and (3) of Arbitration and Conciliation Act, 1996 had expired.

4. Mr. Sumit Kumar, who, appears for the petitioner does not dispute the fact that time had expired before learned Arbitrator could render the award in the matter.

5. Being faced with this difficulty, learned counsel for the petitioner says that this Court has power to extend time both before and after the expiry of time specified under Section 29A(1) and (3) and thus, given the fact that the award was passed when parties had not approached this Court, the best way forward would be to set aside the award and have the learned Arbitrator rehear the parties and pass a fresh award.

6. To be noted, the award is passed in favour of the petitioner. The petitioner, as noticed above, is willing to give up the fruits of the award dated 25.08.2018, therefore, to my mind, the impediment to the extension of time qua in the present proceedings is removed.

7. Accordingly, time for passing the fresh award after hearing counsel for the parties is extended till 31.03.2019, commencing from 19.08.2018.

8. The learned Arbitrator will rehear the parties and as agreed pass a fresh award.

9. At this stage, counsel for the respondent says that it is his contention that the application is not maintainable, as the award has already been passed.

10. To my mind, if such a submission is accepted, it will render the entire proceedings nugatory and therefore as indicated by the petitioner, the only way forward is to regularise the period after 19.08.2018 and give an opportunity to parties to address fresh arguments before the learned Arbitrator, so as to enable the learned Arbitrator to pass a fresh award.

11. Accordingly, the submission of counsel for the respondent is rejected.

12. The petition, is disposed of, in the aforesaid terms.

13. Parties and their Counsels are directed to appear before the learned Arbitrator on 02.02.2019 at 4:00 pm.

14. If for any reason, the said date and time is not convenient to the learned Arbitrator, the learned Arbitrator will be free to fix another date which will be proximate to the date fixed by the Court.

15. Needless to say, the learned Arbitrator will not be burdened by the findings returned in the earlier award.

RAJIV SHAKDHER, J

JANUARY 29, 2019

c

