HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Video Conferencing)

Arb P No. 29/2020
CM No. 5027/2020
CM No. 7486/2020
Arb P No. 30/2020
CM No. 5030/2020
CM No. 7480/2020
Arb P No. 31/2020
CM No. 5033/2020
CM No. 7478/2020

Ircon International Limited through Sanjeev Kumar

Petitioner(s)

Through: -
Ms. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate

V/s

Union Territory of Jammu and Kashmir and Ors.

…..Respondent(s)

Through: -
Mr. Amit Gupta, AAG.

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

ORDER

1. These petitions/applications raise akin and analogies issues, as such, are being clubbed and taken up together for adjudication.

2. Through the medium of instant petitions/applications filed under Section 29-A (4) read with Section 29-A (5) of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 (hereinafter for short the Act), the petitioners/applicants seek extension of time period for completion of arbitration proceedings and rendering an award by the Arbitral Tribunal by a further period of 12 months w.e.f. 20.09.2020.

3. The background facts those stem out from the petitions/applications in hand are that NIT bearing E-NIT No: CE/P&D/RAPDRP/JMU/02 of 2013 came be issued on behalf of the Governor of the then State of

Jammu and Kashmir for Cluster-II for the work of "Design, supply test, transport, survey, construction, erection, testing and commissioning of 66/11 KV, 33/11 KV, sub-transmission, sub station, augmentation of existing sub-transmission sub-station lines, distribution lines, power transformers, new sub-stations, augmentation of existing S/S, lying of new 33 KV lines, re-conductoring of 33 KV lines, laying of new 11 KV lines/ 11 KV lines with AB cable, re-conductoring of 11 KV lines, providing 630/400/250/100/63/25/16 KVA DTRs (for HVDS System), creating of new distribution sub-stations, replacement/augmentation of existing distribution transformers, providing new LT AB cable, replacement of LT lines with AB cable and other allied work for reduction in T&D losses as defined in the bidding document.

4. The petitioner Company is stated to have won the bidding process resulting into issuance of LOA in its favour and an agreement is stated to have been executed and signed thereof on 11.03.2014 as well between the parties.

5. It is being stated that during execution of the project, number of issues caused excessive delay in execution resulting into considerable financial loss to the petitioners forcing the petitioners Company to get the disputes resolved by invoking the Arbitration clause. A petition under Section 11 of the Act, is stated to have been filed before this court by the petitioners after sending notices to the respondents being AP Nos. 02/2019, 03/2019 and 04/2019.

6. The petitions supra are stated to have been allowed by this court vide order dated 13.02.2019 and the disputes raised referred for adjudication to an Arbitral Tribunal consisting of (i) Justice Kurian Joseph, former Judge of the Supreme court of India, (ii) Justice Mansoor Ahmad Mir, former Chief Justice of the High Court of Himachal Pradesh as Arbitrators with (iii) Justice F. M. Ibrahim Kalifulla, former Judge of the Supreme Court of India, as a Presiding arbitrator (hereinafter for short the Arbitral Tribunal).

7. That the Arbitral Tribunal is stated to have entered into reference and is stated to have started 1st hearing/proceeding on 15.04.2019 at Jammu, where after on 13.05.2019 2nd hearing in between the parties are stated to have filed their respective pleadings without any delay.

8. That the 3rd hearing of the Arbitral Tribunal is stated to have been conducted on 06.07.2019 fixing the next date of hearing as 10.08.2019 for framing of issues as also directing the parties to complete their respective pleadings.

9. That the hearing of 10.08.2019 is stated to have got adjourned on account of disruption of communications both in Srinagar and Jammu on account of abrogation of Article 370 and 35-A of the Constitution of India and coming into being of the Jammu and Kashmir Reorganisation Act, 2019.

10. That on 04.09.2019, 4th hearing is stated to have been conducted by the Arbitral Tribunal fixing the next date of proceedings as 26.09.2019 for framing of issues.

11. That on 05.09.2019 respondents are stated to have filed amended counter claim and the petitioner is stated to have filed an application challenging liquidated damages.

12. That on 26.09.2019, 5th hearing is stated to have been conducted and few directions are stated to have been passed by the Arbitral Tribunal.

13. That on 08.10.2019, 6th hearing is stated to have been conducted and issues are stated to have been framed. The petitioner is stated to have been directed to file evidence affidavits which affidavits are stated to have been filed on 29.10.2019 and 30.10.2019.

14. That on 11.11.2019 and 12.11.2019 7th, 8th and 9th hearing of the Arbitral Tribunal is stated to have been conducted wherein cross examination of CW-1 is stated to have been conducted and concluded.

15. That on 15.12.2019, 16.12.2019, 10th, 11th and 12th hearing is stated to have been conducted by the Arbitral Tribunal concluding the cross examinations of CW-3 and CW-4 and further respondents are stated to have been directed to file their evidence affidavits by 10.01.2020.

16. That on 20.01.2020 and 21.01.2020, 13th and 14th hearing is stated to have been conducted wherein cross examinations of CW-2, RW-1 and RW-3 are stated to have taken place.

17. That on 20.03.2020 both parties of the reference are stated to have filed separate applications under Section 29-A (3) before the Arbitral Tribunal expressing their consent for extension of mandate of the Arbitral Tribunal for further period of 6 months from 20.03.2020, in view of expiry of 12 months period of time stipulated under Section 29-A (1) of the Act inasmuch as in view of the fact of extensive

pleadings and evidence lead by both the parties and voluminous record submitted by both the parties.

18. It is being further stated that Presiding Arbitrator of the Arbitral Tribunal informed the parties that in view of consent expressed by them the mandate of the Arbitral Tribunal is extended for a further period of 6 months as per Section 29-A (3) of the Act, up to 20.11.2020 for making of the award and consequently the next dates are stated to have been fixed for further proceedings as 21.03.2020 and 22.03.2020.

19. That on 10.03.2020 onwards on account of outbreak of COVID-19 followed by nation wide lockdown on 25.03.2020, conducting physical meeting/hearing of the proceedings in the matter by the Arbitral Tribunal are stated to have become completely impossible resulting into adjourning of the proceedings, more particularly in view of the fact that the members of the Arbitral Tribunal as also the petitioners and respondents including their witnesses were placed at different places.

20. It is being next stated that on 18.04.2020 petitioner filed an application before the Arbitral Tribunal for conducting the proceedings through video conferencing and the matter is stated to have been fixed on 03.05.2020. No proceedings on that date are stated to have been conducted on account of declaration of residential areas of official respondents as red zones. The matter is stated to have been adjourned further on account of COVID-19, though in between

04.07.2020 date was fixed for conducting of further proceedings through video conferencing upon an E-mail of the petitioner.

21. It is being stated that on 04.07.2020, 07.07.2020, 13.07.2020 and 21.07.2020 15th, 16th, 17th and 18th hearing respectively through video conferencing was conducted by the Arbitral Tribunal while hearing the arguments in the applications filed by the petitioner.

22. It is being next stated that further proceedings (cross examinations) of the witnesses of the respondents got deferred on 24.08.2020, 25.08.2020 and 26.08.2020 (two sessions on each day) on account of coming into contact with COVID-19 positive persons by some of the witnesses and representatives of the respondents and their consequent self isolation/quarantine.

23. It is being stated that on 11.09.2020, 12.09.2020, 14.09.2020, 19.09.2020, 20.09.2020, 21.09.2020 and 22.09.2020 hearings came to be conducted by the Arbitral Tribunal through video conferencing completing the cross examinations of the witnesses of the respondents and closing their evidence.

24. It is being stated that on 08.09.2020 Presiding Arbitrator of the Arbitral Tribunal passed an order communicated through E-mail to all the parties directing therein for seeking extension of mandate of Arbitral Tribunal by further period of 12 months from the jurisdiction of High court as period of 6 months extended under Section 29-A (3) was going to expire on 20.09.2020, in order to enable the Arbitral Tribunal to deal with the voluminous documents and extensive oral evidence and pleadings filed by both the parties.

25. It is being next stated that on 14.09.2020 after consulting both the parties for final arguments to be conducted in these references the Tribunal tentatively fixed the dates of hearing subject to the extension of the mandate of the Tribunal by the High court in the 3rd or 4th week of October 2020 and in the 2nd week of November 2020 so that the oral arguments can be started from both sides for conclusion of the arbitration reference and that the Tribunal gets ample time to pass the award keeping in view the voluminous documents and lengthy evidence lead by both the parties and also that the arbitration references include a claim of approximately more than Rs. 400 Crores and counter claims.

26. It is being further stated that a considerable amount of money and time has been spent by the parties before the Arbitral Tribunal and that all due diligence has been taken thereof for conclusion of Arbitration reference at the earliest and that due to the reasons more particularly on account of non-holding physical hearing because of COVID-19 beyond the control of the parties and Tribunal which in no case are attributable to either of them, the proceedings could not be completed within the time stipulated under Section 29-A (1) and extended under Section 29-A (3) of the Act.

27. The petitioners/applicant on account of aforesaid premises seek extension of time period for conclusion and completion of proceedings before the Arbitral Tribunal by further period of 12 months under Section 29-A (4) read with 29 (5) of the Act.

28. Respondents have filed their reply in response to the instant applications/petitions wherein essentially the facts pleaded therein, the applications/petitions are admitted and no objection is being expressed with respect to the extension of time sought for completion of Arbitration proceedings.

29. **Heard and considered.**

30. Perusal of the pleadings of the parties and record appended thereto, manifestly demonstrate that efforts and endeavours have been made by the Arbitral Tribunal to conduct and conclude the Arbitration proceedings as expeditiously as possible and to dispose of the same. The delay in the matter seemingly has occasioned on account of reasons beyond the control of the Arbitral Tribunal and the parties which by no sense of imagination could said to be either deliberate or intentional but for the reasons neither attributable to the parties nor to the Arbitral Tribunal but for the cause and reasons beyond their control.

31. Further perusal of the pleadings suggest that the proceedings conducted by the Arbitral Tribunal are almost at the final stage. The period of time sought in the instant petitions/applications is being prayed keeping in view voluminous pleadings and extensive evidence filed and lead by the parties respectively inasmuch as in view of the fact that a considerable amount of money and time is stated and appears to have been spent by the parties in the process from the date of commencement of the proceedings before the Arbitral Tribunal up till now. The time sought in the petitions/applications thus, prima-

facie seems to be reasonable and warranted in the facts and circumstances of the case.

32. Thus, in view of aforesaid facts and circumstances the instant petitions/applications are allowed and time limit in Arbitration cases Nos. 4-A of 2019 titled "Ircon International Ltd. Vs. State of J&K & Ors", 4-B of 2019 titled "Ircon International Ltd Vs. State of J&K & Ors and 4-C of 2019 titled "Ircon International Ltd Vs. State of J&K & Ors pending with the Arbitral Tribunal comprising of Hon'ble Justice (Retd) F. M. Ibrahim Kalifulla, Hon'ble Justice (Retd) Kurian Joseph and Hon'ble Justice (Retd) Mansoor Ahmad Mir, is extended by further period of 12 months w.e.f. 20.09.2020.

33. **Disposed of** along with all connected CM(s).

(Javed Iqbal Wani)
Judge

Jammu
18/12/2020
"Ishaq"

i. Whether the Order is speaking? Yes/No.
ii. Whether the Order is reportable? Yes/ No.