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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 851 OF 2019**

Astonfield Renewable Private Limited	...Petitioner
<i>Versus</i>	
Astonfield Solar Gujarat Pvt Ltd & Anr	...Respondents

Ms Ferzana Behramkamdin, *with Ms Shlesha Sheth and Ms R Ghusharia, i/b M/s FZB & Associates, for the Petitioner.*
Mr Vividh Tandon, *i/b Trilegal Advocate, for the Respondents.*

CORAM: G.S. PATEL, J.
DATED: 13th January 2020

PC:-

1. The Petition is under Section 29-A of the Arbitration and Conciliation Act 1996. The circumstances are somewhat peculiar. There are two Respondents. Between the Petitioner and the two Respondents there were two separate contracts. Both were being heard in arbitration together by the same arbitrator. *Since July 2018*, it seems that the 1st Respondent is in insolvency proceedings before the NCLT, Delhi. Hence the claim in the Section 29-A of the Arbitration and Conciliation Act 1996 is not only for an extension of time but also for leave to split or segregate the two arbitral claims, permitting the arbitration as between the Petitioner and the 2nd Respondent to proceed.

2. I note that one of the grounds of opposition is that there is a delay of about six months in filing this Petition. I will address that question shortly.

3. There was a Development and Management Services Agreement dated 25th October 2010 between the Petitioner and the 1st Respondent. There was a similar Development and Management Services Agreement dated 25th February 2011 between the Petitioner and the 2nd Respondent. Each of these Agreements dealt with the setting up, running and maintenance of solar power projects. The first Agreement related to territories in Gujarat and second related to territories in Rajasthan. Both Agreements were amended on 1st October 2012. These amendments were also similarly distinct, i.e. they were in respect of two Respondents separately and in respect of separate territories.

4. Disputes arose between the Petitioner on the one hand and the Respondents on the other. The Petitioner filed Commercial Arbitration Petition No. 212 of 2017 under Section 9 of the Arbitration and Conciliation Act 1996.

5. On 18th November 2016 this Court appointed an Advocate of this Court as a sole arbitrator. He expressed his inability to take up the assignment. He was substituted by another Advocate. The substituted arbitrator entered upon the reference to his arbitration on 24th November 2016. Before him a statement of claim, statement of defences and a counter claim came to be filed. Although the statement of claim was filed jointly against Respondents Nos. 1 and

2, it arose from distinct Agreements against the two Respondents in regard to distinct subject matters. The prayers in the statement of claims, I am informed, are also severable and clearly demarcated as between the two Respondents. *Similarly the statement of defence and counter claim are also distinct and separate. The Petitioner has then filed a statement of defence to the counter claim.*

6. Issues were framed on 23rd January 2017.

7. On 2nd March 2017 the two Respondents independently terminated their respective Agreements. There was some correspondence with which I am not immediately concerned.

8. For the purposes of this Application the next material date is 20th April 2017 when the substituted arbitrator recused himself. The parties then by consent appointed Mr SR Nargolkar, learned Advocate of this Court, as the sole arbitrator under the provisions of Section 15(2) of the Arbitration and Conciliation Act. Before Mr Nargolkar the arbitrations have proceeded. I use this word in the plural because though the hearings may be consolidated, it is quite clear from what is set out above that there are in fact two arbitrations each relating to a separate Respondents and each relating a separate contract. The commonality of the hearings (or even some or all of the pleadings) will not affect this position. It is quite clear that there will have to be two separate awards at the end, one in respect of arbitration claim against the 1st Respondent and the second in regard to the arbitration claim against the 2nd Respondent. The fact that parties have historically conflated these

two Agreements and Counter Claims is totally immaterial to the position in law.

9. There was then before Mr Nargolkar the filing of the Petitioner of a consolidated statement of claim. This incorporated the earlier statements but the claims against the two Respondents were made distinctly and separately even in this consolidated statement. The defences to it were also separate.

10. Paragraph 7 of the Petition has a detailed chronology of how events have transpired from the beginning. These facts are noted. At present the Petitioner's first witness is under cross-examination by the Advocates appearing for the 2nd Respondent.

11. I asked Ms Behramkamdin whether the evidence in these two matters was also common and on instructions she states that it is not and cannot be because the two contracts are separate and pertain to distinct regions. Thus, the conclusion or completion of evidence in regard of the 2nd Respondent cannot adversely or otherwise affect the evidence and the claim against 1st Respondent in respect of its own separate and distinct contract.

12. It is for this reason that there is a prayer now included in prayer clause (b) for "splitting the claim". In fact that is the order that ought to have been made in the first place by making two separate references, albeit to the same arbitrator.

13. Having regard to the NCLT proceeding in which the 1st Respondent is involved, I will have to make that order now.

14. As regards the splitting of the claim the Respondents have no objection, and in fact this has been so noted by the learned sole arbitrator.

15. In order to avoid any misunderstanding, I will formally direct the deletion of 1st Respondent as a party Respondent to the Petition. While doing so, I specifically reserve liberty to the Petitioner to apply for an extension of time as and when situation before the NCLT permits it. This order of deletion is not to be construed as a dismissal of the Petitioner's claim for extension against the 1st Respondent.

16. As against the 2nd Respondent, there remains the question of delay. This is explained in paragraph 16 by pointing out that both parents of the attending Director of the Petitioner required care in view of their age and health. The mother passed away after an illness. Both parents live overseas. This preoccupation with an intense personal situation prevented the Petitioners from properly attending to the matter and made it impossible for them to apply for an extension of time.

17. Mr Nargolkar's arbitral mandate is said to have ended on 13/14th January 2019. This Petition was filed only on 8th July 2019. There is thus clearly a delay but I believe the reason furnished is a

sufficient explanation to condone that delay. Far too much work has been done already to now set the whole matter at naught.

18. I will therefore, extend the time for the arbitration as between the Petitioner and 2nd Respondent under the Development and Management Services Agreement dated 25th February 2011 as amended on 1st October 2012 until 22nd December 2020.

19. As against the 1st Respondent liberty to the Petitioners to apply when it is entitled in law to do so.

(G. S. PATEL, J)

Note: This order is modified as per order dated 3rd February 2020. The corrections are shown in bold and italics.