

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1013 OF 2019

Ramesh Kantilal Shah & Ors

...Petitioners

Versus

Atul C Shah & Anr

...Respondents

Mr Kayval Shah, for the Petitioner.

Mr Vikram Sathye, i/b Yogita Deshmukh, for the Respondent.

CORAM: G.S. PATEL, J.

DATED: 9th January 2020

PC:-

1. The Petition is under Section 29-A of the Arbitration and Conciliation Act 1996 for extension of time to complete the arbitration. It arises in somewhat unusual circumstances. The parties, i.e. the three Petitioners and two Respondents are all directors of a private limited company, one ARC Chemicals Private Limited.

2. The three Petitioners between them hold 50% of the equity in ARC Chemicals, some 25000 equity shares. The Respondents hold the rest. Thus, the shareholding of ARC Chemicals is equally divided between the two sides.

3. The disputes and differences arose between the parties in regard to the management of ARC Chemicals. I am told that there

are proceedings in the nature of operation and mismanagement relief actions pending before the NCLT, Mumbai. The Memorandum and Articles of Association of ARC Chemicals contained an arbitration clause providing for a reference to arbitration should any disputes arise between the directors of the company.

4. The Petitioners filed an Arbitration Petition under Section 9 of the Arbitration and Conciliation Act 1996. On this, the Court made an order of 3rd October 2017. Part of the order was by consent in regard to future payments to be made by the company and the second part was the appointment of a learned advocate of this Court as the sole arbitrator to decide the disputes and differences between these five directors. The Section 9 Petition itself was converted to an Application under Section 17 for disposal by the learned sole Arbitrator so appointed.

5. The learned sole arbitrator entered upon the reference to his arbitration on 7th November 2017 when he convened the first meeting. At that time the Respondents also presented an application under Section 16 of the Arbitration and Conciliation Act. The learned sole arbitrator directed the completion of pleadings in that Section 16 Application and fixed it for final hearing on 2nd December 2017. That hearing having concluded, the matter was adjourned for pronouncement of the order to 28th February 2018. On 26th February 2018, the learned sole Arbitrator rejected the Section 16 Application. He then set down the matter for further directions on 10th April 2018.

6. The Respondents requested and were granted an adjournment. There was a direction to the Respondents to file their Written Statements within three weeks.

7. The parties then entered into settlement negotiations. Those settlement talks failed and in the meantime, the Section 17 Application (i.e. the original Section 9 Petition that was sent to the learned sole Arbitrator) was also adjourned. The learned sole Arbitrator asked the parties to complete the pleadings. He scheduled a hearing on 14th July 2018. The Petition says that there were certain unavoidable circumstances that delayed the matter to 19th January 2019. It does not say precisely that what those circumstances were but both sides agree that no fault can be attributed to the arbitral tribunal in this regard. It is for this reason that I will not place much reliance or give much importance to this circumstance.

8. Thus, until January 2019, the Section 17 Application was yet pending. Again the parties attempted a settlement and the matter was adjourned to February 2019. In the meantime, the tribunal directed the completion of pre-trial formalities. The application under Section 17 was heard on 28th February 2019 and parties were given the liberty to file written submissions and compilations of decisions that each had cited. On 16th March 2019, the Petitioners requested the learned sole Arbitrator to defer the hearing or order on the Section 17 Application. The tribunal agreed but continued with the main matter and fixed it on 11th April 2019 to finalise the issues/points for determination. This was done and the parties were

directed to file their respective Evidence Affidavits by 22nd July 2019.

9. It is at this stage that the Respondents filed a counter Application under Section 17 seeking certain interim reliefs and also for an urgent further hearing on the previous Section 17 Application. On 30th June 2019, the tribunal directed the parties to file an application for extension of the mandate. Both sides had initially consented to an initial extension of six months on 10th January 2019. The extended mandate ended on 3rd April 2019.

10. As regards the first Section 17 Application, the parties have agreed that it will be heard along with the main claim. The Respondents' separate Section 17 Application is yet pending final orders. Arguments are concluded.

11. The Claimants have filed their witness statements. The Respondents have filed a witness statement of one of the two witnesses it proposes to lead. This now requires some explanation. The principal dispute is that the Respondents allegedly ordered some material from a third party, one Zenith Metalics, for an invoice value of Rs.55 lakhs. The Petitioners claim that while this amount went out of company funds, the goods were never actually received by the company. It is not necessary to go further into these details. I have only mentioned them because the Respondents propose to lead the evidence of representative of Zenith Metalics. There can be no possible objection to this evidence being allowed to be led. There has been some delay in filing that Evidence Affidavit.

12. Accordingly, while I am inclined to grant an extension for a few months to enable the completion of all this, I will take the liberty of setting out, in this order itself, a schedule that is not to be altered for completing discovery and inspection and the exchange of statements of admission and denial and for the filing of the Respondents second witness's witness statement.

13. Hence the following order.

- (a) Time to complete the arbitration is extended until 31st August 2020.
- (b) Discovery and inspection is to be completed on or before 31st January 2020.
- (c) Statements of admission and denial are to be exchanged by 14th February 2020.
- (d) The Affidavit of the Respondents' witness from Zenith Metallics is to be filed and served on or before 14th February 2020. All questions in regard to this testimony are expressly left open for appropriate cross-examination.

14. The Arbitration Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)