

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.1225 of 2020(O&M)

Date of decision: 24.2.2020

Infrastructure Leasing & Financial Services Ltd.Petitioner

VERSUS

Ambience Developers & Infrastructure Pvt. Ltd.Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Puneet Bali, Senior Advocate with
Ms. Aditi Mittal, Advocate and
Ms. Mriganki Nagpal, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 10.12.2019 passed by the District Judge, Gurugram whereby application filed by the respondent (claimant before the Arbitrator) for extension of time has been allowed and six months time has been extended for facilitating completion of arbitration proceedings by the Arbitrator.

A brief background of the case is that in view of arbitration clause contained in the agreement entered into between the parties, the matter was referred to Arbitrator Justice N.K. Mody, Former Judge, M.P. High Court in arbitration case No.15/2017. The Arbitrator entered upon reference on 16.09.2017 and a period of one year expired on 15.09.2018. Subsequent thereto, on 10.10.2018, one of the witnesses (RW-1) examined by the petitioner (respondent therein) was cross examined. The next date of hearing was fixed for 25.10.2018. The proceedings before the Arbitral Tribunal were stayed by the National Company Law Appellate Tribunal (NCLAT) vide order dated 15.10.2018 in respect whereof intimation was

sent to the Arbitrator. Though NCLAT vacated the stay vide order dated 11.01.2019 but intimation with regard to vacation of stay was communicated to the arbitral Tribunal by the petitioner vide email dated 08.04.2019. A request was made to the Arbitrator for fixing a date to resume the proceedings. The Arbitrator fixed the next date of hearing for 16.07.2019. However, vide circulation order dated 25.04.2019 of the Arbitral Tribunal, the parties were directed to calculate the period excluding the period when stay was in operation and to take appropriate steps for extension of time in case it was necessary.

The respondent filed a petition before the High Court of Delhi for extension of time but the same was later withdrawn for want of jurisdiction. Later, the instant application was filed that came to be allowed by the Court below vide order impugned.

Counsel for the petitioner would argue with vehemence that in the order impugned, no such finding has been recorded that there is sufficient cause for extension of time nor the Court has imposed any terms and conditions subject to which extension has been allowed, in compliance with provisions of Section 29A (5) of the Arbitration and Conciliation Act, 1996 (in short 'the Act'). It is further argued that the petitioner filed detailed reply to the application contesting claim of respondent and that delay in conclusion of arbitration proceedings within the initial period of one year is liable to be attributed to the Arbitral Tribunal. It is further argued that on expiry of initial period of one year on 15.09.2018, the parties never extended the period under sub-Section (3) of Section 29A, therefore, the present is a fit case wherein the Court should have exercised jurisdiction under sub-Section (6) of Section 29A of the Act to substitute

the Arbitrator. In support of his contentions, he has relied upon judgment of Hon'ble the Supreme Court **Jayesh H. Pandya and another Vs. Subhtex India Ltd. and others, Civil Appeal No.6300 of 2009 decided on August 27, 2019.** Further reference has been made to judgment of the Delhi High Court **Olympic Oil Industries Ltd. Vs. Practical Properties Pvt. Ltd., OMP (Misc) 3/2017 and IA Nos.10353/2017, 10355/2017 decided on 24.04.2018** and that of Allahabad High Court **Jairath Constructions Vs. Triveni Engineering and Industries Ltd. and others, Arbitration and Conciliation Application U/s 11(4) No.62 of 2015 and 72 of 2016, decided on 17.04.2018.**

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition and judgments cited at bar.

Before advertng to the submission made by counsel for the petitioner, it is appropriate to extract relevant part of Section 29A of the Act that deals with time limit for arbitral award, quoted thus:-

“(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the

arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period: Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section

shall be deemed to have received the said evidence and material.”

Reverting to the case at hand, the initial period of one year stood expired on 15.09.2018. Indisputably, on 10.10.2018, one of the witnesses of the petitioner (respondent therein) was examined by the Arbitrator. The petitioner never raised an issue that since the period of one year had already expired on 15.09.2018, the mandate of Arbitrator stands terminated. Not only this, the petitioner informed the Arbitrator about stay granted by NCLAT, New Delhi in two company appeals, one filed by Union of India in which the petitioner was respondent and the other filed by the petitioner against Union of India and others. As per case set up by the petitioner, though the order passed by NCLAT was vacated on 11.01.2019 but the petitioner sent intimation to the Arbitral Tribunal on 08.04.2019 with regard to vacation of stay and fixing a date in the arbitration proceedings.

Sub-section (3) of Section 29A of the Act provides that the parties may, by consent, extend the period specified in sub-Section (1) for making award for a further period not exceeding six months. Counsel for the petitioner has failed to advance any arguments much less supported by a precedent that extension by consent of the parties is required to be in writing and not impliedly. Taking into consideration conduct of the petitioner noticed hereinbefore, it can safely be held that the petitioner concurred for extending the period for making award by the Arbitral Tribunal.

The petitioner sent communication to the Arbitral Tribunal on 08.04.2019 informing about vacation of stay and fixing the next date. As per circulation order dated 25.04.2019 (Annexure P-10), the case was fixed for cross examination of RW-2 and final arguments on 16.07.2019 but the parties were directed to take appropriate steps for extension of time in case it is necessary to do so,. Meaning thereby that subsequent to vacation of stay order by NCLAT, Arbitrator could not conduct any proceedings on account of expiry of period specified in sub section (1) and extended under sub section (3) of Section 29 of the Act.

Indeed, the Court below has noticed these facts with regard to grant of stay and vacation of stay and intimation thereof to the Arbitral Tribunal, while noticing arguments raised by counsel for the applicant therein but it has not been specifically held that there is sufficient cause for extension of time to facilitate completion of arbitral proceedings. In the given circumstances, there are two options with the Court either to remit the matter for passing a fresh order in view of provisions of Section 29A of the Act or examine the aspect of sufficient cause so that arbitration proceedings are not delayed any further. In view of discussion made hereinbefore, in my considered opinion, present is a case where there is sufficient cause for extension of time to complete the arbitral proceedings by the present Arbitral Tribunal.

Indisputably, earlier the petitioner filed an application to challenge jurisdiction of the Arbitrator but the same was rejected. It appears that challenge to order of extension of time is another ploy to seek substitution of the Arbitrator by invoking sub section (6) of Section 29A of the Act. In this view of the matter, I do not find any reason to intervene.

To be fair to the petitioner, counsel has relied upon judgment of Hon'ble the Supreme Court **Jayesh H. Pandya's case** (supra) but in the said case the provisions of Section 29A of the Act were not the subject matter of discussion and decision before the Court. On the contrary, there was an agreement between the parties fixing the period within which the Arbitrator was required to complete the arbitral proceedings. Taking into consideration the provisions of Section 14 and 15 of the Act, it was concluded in para 23 of the judgment, quoted thus:-

“23. The time fixed for the arbitration and/or schedule of time limit in such arbitration proceedings, as it is recognised by law, there is no reason not to accept the same, basically in the present facts and circumstances where the parties themselves agreed to bind themselves by the time limit. Section 14 read with Section 15 of the Act, 1996 also recognise this mechanism and after the expiry of four months period from the date of first preliminary meeting held on 4th May, 2007, the Arbitrator indeed became de jure unable to perform his functions and the mandate to act as an Arbitrator in the arbitral proceedings between the parties as prayed for stood terminated.”

In the case at hand, neither an application was filed by the petitioner that mandate of the Arbitrator stood terminated nor a plea was raised that fee of the Arbitrator is liable to be reduced as proceedings have been delayed for the reasons attributable to the Arbitrator nor the time limit for conclusion of arbitration proceedings was fixed by an agreement

between the parties. In this view of the matter, the petitioner cannot derive any advantage to his contention from the referred authority.

The judgment in Olympic Oil Industries Ltd. (supra) was passed in view of the peculiar facts and circumstances, therefore, has no bearing on the facts of the case at hand. In Jairath Constructions's (supra), the High Court of Allahabad allowed application for extension of time by holding that the Court finds sufficient cause for extension of time to conclude arbitration proceedings with observations that the arbitral Tribunal shall conclude the proceedings and make the award in accordance with law without granting any unnecessary adjournment to either of the parties. Since in the case at hand, counsel for the petitioner had submitted that arbitration proceedings are pending for 24.02.2020, may be concluded today itself, no further directions in exercise of power under sub-Section (5) of Section 29A of the Act is warranted, in the given scenario.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine.

FEBRUARY 24, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no