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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 197/2020 & I.A. 4012/2020

AIRONE CHARTERS PVT LTD

..... Petitioner

Through: Mr.Mohit Jolly with Ms.Smriti
Verma, Adv.

Versus

JETSETGO AVIATION SERVICES PVT LTD. Respondent

Through: Mr.Gaurav Gupta with Mr.Savyasachi
Sahai, Advs. & Mr.Akshat Aggarwal,
AR of the respondent.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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27.05.2020

1. The present petition has been taken up for hearing through video conferencing.
2. Vide the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act), the petitioner seeks appointment of an Arbitrator for adjudication of disputes qua three agreements, all dated 11.08.2017 entered into between the petitioner and the respondent for chartering of planes through the petitioner.
3. Learned counsel for the petitioner submits that upon a petition being filed by the respondent, the matter was referred to a three

members Tribunal and the claims raised by the petitioner are a matter of consideration before the Tribunal, wherein the petitioner had also sought to raise counter claims qua the same agreements in respect of the dues payable to the petitioner from the respondent. He submits that as there was a delay on the part of the petitioner in raising the counter claims, the learned Tribunal vide its order dated 06.07.2019 declined to accept the same unless the time for completion of the arbitral proceedings was extended by six months by this Court. The petitioner had then approached this Court by way of a petition under Section 29A of the Act seeking extension of time in accordance with the observations of the Tribunal, which petition was permitted to be withdrawn by this Court vide its order dated 26.09.2019 with liberty to the petitioner to avail other remedies as may be available in law. He therefore submits that the petitioner is fully justified in invoking arbitration qua the said counter claims independently for which purpose he relies on a decision dated 06.04.2018 of the Coordinate Bench of this Court in ***O.M.P. (COMM) 319/2016 [Union Of India & Ors. v. Arun Kumar Gupta]***. He further submits that even though the Tribunal vide its order dated 25.10.2019 had recorded that the petitioner's counter claims were being struck off the record of the Tribunal, the counter claims had in fact not been filed and only liberty was sought from the Tribunal to file the same belatedly.

4. On the other hand, the learned counsel for the respondent vehemently opposes the petition and submits that once the petitioner's counter claims was struck off from the record by the learned Arbitral Tribunal, which order has attained finality, the petitioner cannot be

allowed to invoke arbitration qua the very same counter claims especially when its petition under Section 29A of the Act already stands rejected by this Court. He further submits that no such liberty to invoke arbitration qua the same counter claims was granted to the petitioner by this Court while permitting the petitioner to withdraw its petition under Section 29A of the Act.

5. In response, learned counsel for the petitioner reiterates that the petitioner has now invoked arbitration in accordance with the liberty granted to it by this Court vide its order dated 26.09.2019. In view of the stand taken by learned counsel for the respondent, learned counsel for the petitioner prays for leave to withdraw the petition with liberty to approach the Court to seek clarification of order dated 26.09.2019 passed by this Court in ***O.M.P.(MISC.)(COMM.) 290/2019***.

6. The petition is dismissed as withdrawn along with the pending application with liberty as prayed for.

7. The order be uploaded on the website forthwith. A copy of the order be also forwarded to the learned counsel through email.

MAY 27, 2020
gm

REKHA PALLI, J