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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(MISC.)(COMM.) 140/2020

ERA INFRA ENGINEERING LTD Petitioner
Through: Mr. Prateek, Adv.

versus

NTPC LTD Respondent
Through: Mr. Sanjay Rawat, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

% **ORDER**
02.09.2020

This petition has been filed by the petitioner through Resolution Professional with the following prayers:

“It is, therefore, most respectfully prayed that the Hon'ble Court may graciously please to:

i. That (1) one year' time extension be granted under Section 29A(4) read with Section 29A(5) of Arbitration & Conciliation Act, 1996 for the Arbitral Tribunal to conclude the Arbitration proceedings and pass the Arbitration Award.

ii Pass any other or appropriate order which the Hon'ble Court deem fit in the facts of the case.”

At the outset, learned counsel for the petitioner states that in a similar petition between the same parties being OMP (MISC.) (COMM) 146/2020, the Coordinate Bench of this Court had extended the time for completion of proceedings till June 30, 2021 w.e.f November 16, 2019. He states that there is no reason why similar order should not be passed in these

proceedings as well.

Mr. Sanjay Rawat who appears for the respondent states that reply could not be filed because of lockdown. He makes similar submissions as made by him in the aforesaid petition. I note that the Coordinate Bench has disposed of the petition by stating as under in Para 10 and 11:

“10. The respondent has vehemently contended that the petitioner neither rendered full and diligent participation in arbitration, nor took the requisite steps to move an appropriate and timely application before this Court for extension of the arbitrator’s mandate. In this regard, my attention was drawn to the order passed by the learned Arbitrator on 08.11.2019, on which date the petitioner had informed the learned Arbitrator of its intention to move an application for extension of time before this Court. The respondent has urged that despite this statement before the learned Tribunal, the petitioner actually moved an application before this Court only after a period of 8 months had elapsed since then. Although there may be merit in the respondent’s contentions in this regard, the record also shows that the petitioner was in fact involved in corporate insolvency resolution proceedings since 08.05.2018 itself and that the present petition has been filed by the resolution professional. Therefore, the petitioner’s plea that it was prevented from instituting the proceedings in a timely manner on account of hang-ups brought on by the insolvency proceedings and the accident of its authorised representative, does have merit. In any event, the fact that the dispute between the parties is yet to be decided on merits by the learned Arbitrator cannot simply be disregarded. Ultimately, if an award is rendered in the arbitration proceedings, it would be in the interest of both parties, especially the petitioner’s creditors who would be in a better position to protect their assets and fortify their financial position if existing disputes are expeditiously resolved. Therefore, I find that interest of justice demands this matter be permitted to continue in arbitration, subject to payment of costs by the petitioner for the delay it caused in moving this application.

11. Accordingly, the present petition is allowed and the time for completion of the proceedings is extended till 30.06.2021, reckoned w.e.f. 16.11.2019. These directions are, however, subject to payment of costs of Rs.25,000/- payable by the petitioner to the respondent within a period of 2 weeks.”

In view of above, I do not see any requirement of filing reply to the petition. In fact, I find that no reply was filed in the OMP (MISC.) (COMM) 146/2020. Mr. Rawat has given a statement that he does not wish to file reply in the said matter. If that be so for parity of reasons, this petition needs to be allowed and accordingly, the time for completion of arbitration proceedings by the learned Arbitrator is extended till June 30, 2021 w.e.f November 16, 2019.

On the payment of cost, learned counsel for the petitioner states that petitioner is already before NCLT and a Resolution Professional has been appointed. He states, even the employees of the company are not being paid. In substance, it is his submission that paying of costs shall be a burden on the petitioner.

Noting the said submission, I dispose of the petition with no costs.

V. KAMESWAR RAO, J

SEPTEMBER 2, 2020/jg