

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Original Side

Present:

The Hon'ble Justice Shekhar B. Saraf

A.P No. 295 of 2022

AHLUWALIA CONTRACTS INDIA LIMITED
Versus
PASARI MULTI PROJECTS PRIVATE LIMITED

For the Petitioner : Mr. Rudraman Bhattacharyya, Advocate
Mr. Souvik Kndu, Advocate

For the Respondents : Mr. Surajit Nath Mitra, Sr. Advocate
Mr. Kumar Gupta, Advocate
Mr. Deepak Jain, Advocate
Mr. Abhishek Dutta, Advocate

Last Heard on : August 4, 2022

Judgment on : August 4, 2022

ORDER DICTATED IN OPEN COURT :

1. This is an application under Section 29A of the Arbitration and Conciliation Act, 1996 ('the Act') seeking extension of time granted for disposal of the arbitral reference pending before the learned arbitral tribunal of Hon'ble Justice Alope Chakrabarti (Retd.) by a further period of 24 months or such other time as this Court deems fit.

2. On December 08, 2011, the respondent Pasari Multi Projects Private Limited ('Appointing Authority') gave a work order (by way of an acceptance letter) to the petitioner Ahluwalia Contracts India Ltd. ('Contractor') for civil construction works for hotel and commercial tower at the former's corporate empire project in Kolkata, West Bengal. The said work order was issued in reference to the Notice Inviting Tender ('NIT') issued by the Appointing Authority and subsequent submission of the offer by the Contractor.
3. The petitioner is having differences with the respondent arising out of and/or in connection with the said NIT and the acceptance letter. The first arbitration could not be completed as the erstwhile arbitral tribunal became functus officio on the expiry of twelve (12) months time period from the commencement of arbitral proceedings. From the records of this matter, it seems that the learned arbitrator of the erstwhile arbitral tribunal entered reference upon on October 25, 2017, and accordingly, arbitration was deemed to have commenced from this date onwards. Therefore, the mandate expired on October 25, 2018 and onwards.
4. Subsequently, an application under Section 29A dated March 17, 2019, being Misc Case No. 14 of 2019, for extension of time of the erstwhile arbitral tribunal was filed and was pending before the Alipore Court.

During the pendency of this application the learned arbitrator Justice P.K. Biswas (Retd.) passed away on April 27, 2020.

5. On further due deliberations and discussion between the parties, via letter dated October 10, 2020, the respondent, without prejudice to its rights and contentions as regards to the constitution of present arbitral tribunal consented to the appointment of Justice Aloke Chakraborty (Retd.) to act as the learned sole arbitrator. The consent by the respondent was also made subject to the result of the pending Section 29A application before the Alipore Court, and further subject to the contentions raised by them in their pending Section 16 application of the said Act. The respondent in the said letter also stated that it is false to allege that the Hon'ble Justice P.K. Biswas (erstwhile arbitrator) died during the arbitration proceedings and argued that there cannot be any appointment in place and stead of Hon'ble Justice P.K. Biswas (Retd.). Be that as it may, on November 04, 2020 the learned arbitrator was informed by the petitioner of this appointment by the parties.
6. In the meanwhile, the present arbitrator Justice Aloke Chakraborty (Retd.) held preliminary meetings and also advised the petitioner to expedite and file the Section 29A application before the Hon'ble Calcutta High Court as the same was the appropriate forum and not the Alipore Court.

7. From the bare reading of Section 29A(4) of the Act, it is palpably clear that the mandate of the arbitrator stands terminated if the arbitral proceedings is not completed within 12 months or the extended time period, unless the Court has, either prior to or after the expiry of the period so specified, extended the time period.
8. The petitioner herein has contended otherwise before the present arbitral tribunal, and after hearing the parties, the present tribunal decided to proceed with the arbitral proceedings. The relevant portion of the order dated September 09, 2021 passed by the Hon'ble Justice (Rtd.) Aloke Chakraborty is provided below:

“This law does not provide any continuation of the tribunal as there is no provision for extension meaning a continuation. The distinction between termination of mandate of arbitrator under section 29A and termination of mandate under sections 14 & 15 is clear. One is a continuation of the tribunal by court on extension of mandate of the arbitrator (ordinarily of the same arbitrator) and the other is reconstitution of tribunal by the parties, following initial procedure of appointment of arbitrator, on compulsory replacement of the earlier arbitrator by a new arbitrator. Even in case of substitution of one arbitrator or all the arbitrators under section 29A(6), apart from the fact that this substitution of arbitrator is by court and not by parties, it is continuation of the tribunal and of the proceeding, as clearly indicated.

It appears that the heading of Section 29A “Time limit for arbitral Award” read with the contents of the section itself undoubtedly indicates that it was intended by the Legislature to get the proceeding concluded within twelve months or within the

extended period, if any, under section 29A (3) and mandate of the arbitrator stands terminated on expiry of the said period subject to any extension of time by court. The expression 'extension' indicates continuation of the tribunal on extension. In terms of the provisions of the said section 29A mandate is not terminated finally and power was given to the Court for continuation by extension of such period.

In above view of the findings, it appears that nomination of the new Arbitrator in the present facts is under sections 14 & 15 and amounts to reconstitution of the Tribunal entitling it to continue with the proceeding without there being an extension of time by the Court under Section 29A(5).

The respondent reserved its rights to raise the objections as regards impact of death of arbitrator. This aspect is therefore considered by this tribunal upon hearing both parties. As regards the objections mentioned in its application under section 16 of the Act, the same will be considered at the appropriate time.

The two judgments cited by respondent are on interpretation of statutes. But in the facts of the case and in view of the findings herein, said judgments do not require further consideration.

Therefore, when the new Arbitrator has been nominated/appointed by consent of parties, the Tribunal on such appointment can be effective enjoying fresh period of mandate and there is no requirement of extension of time under section 29A(4) & (5). In fact, as there was replacement of arbitrator under section 15 of the Act, no extension was permissible under the law. The proceeding, therefore, may continue in accordance with law subject to any decision on the respondent's application under section 16 of the Act."

9. Subsequent to this order, the respondent prayed for an adjournment to the arbitral proceedings on the ground that the arbitral proceedings cannot continue without extension of time under Section 29A granted by an appropriate court, and that they seek to file a revisional application under article 227 of the Indian Constitution challenging the order passed by the present arbitral tribunal. It is to be noted that this order dated September 09, 2021 by the arbitral tribunal has been challenged by the respondent herein by way of a Civil Revision bearing No. C.O. 1765 of 2021. The relevant application is pending before a co-ordinate Bench.
10. In view of the above facts, the petitioner has filed this Section 29A application seeking extension of the time for the present arbitral tribunal. In response, the contention of the respondent is that till the mandate of the erstwhile arbitral tribunal has not been extended and unless such mandate is extended, the question of extending the mandate of the present arbitral tribunal does not and cannot arise.
11. The view taken by the learned Arbitrator is that an application under Section 29A is not required to be made as nomination of the new arbitrator under Sections 14 and 15 of the Act amounts to reconstitution of the arbitral tribunal entitling it to continue with the arbitral proceedings.

12. The present application only seeks an extension of time of the arbitral reference of the learned arbitral tribunal of Justice (Rtd.) Aloke Chakrabarti and does not seek revival, by way of extension of time, of the arbitral proceedings conducted by the erstwhile arbitral tribunal of Late Justice P.K. Biswas (Retd.).
13. As stated earlier, from a bare reading of Section 29(4) of the Act, it is clear that the mandate of an arbitral tribunal ceases upon expiry of the prescribed time limit unless the Court has, either prior to or after the expiry of the period so specified, extended the period. This is exactly the reason why the Parliament by way of Act 33 of 2019 (w.e.f. August 30, 2019), amended this sub-section to state that where an application for extension under Section 29A (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application.
14. Further, the prayer of the petitioner for extension of time for the present arbitral tribunal cannot be accepted as with the withdrawal of Section 29A application filed before the Alipore Court, the conditional consent, for appointment of present arbitral tribunal, provided by the respondent goes away and does not exist anymore. The only avenue for the revival and/or continuation of the arbitral proceedings at this stage would be to approach the competent court with an application under Section 29A(5) of the Arbitration and Conciliation Act, 1996 seeking extension of time

for completion of the arbitral proceedings by extending the mandate of the erstwhile arbitral tribunal.

15. The observations made by me in paragraph 14 are not findings of this Court but only prima facie observations on issues that are pending before the Revisional Court in C.O. 1765 of 2021. I make it clear that these tentative findings have no binding and precedential effect whatsoever.
16. Insofar as other issues raised by the respondent such as validity of the agreement and the arbitral tribunal are concerned, the applicable relevant provisions of the Arbitration Act would have to be taken recourse to by the parties, and these grievances cannot be sought to be dovetailed into and made part of the arsenal when seeking to resist an application for extension.
17. In view of the above discussion, I am of the view that the present petition before me is premature in nature and creates multiplicity of proceedings with regard to similar issues that are pending before a co-ordinate Bench. I am of the opinion that unless the relevant Civil Revision application is heard, and the question regarding the validity and mandate of the present arbitral tribunal is decided, the issue of the requirement of extension of time under Section 29A (4) and (5) of the

erstwhile arbitral tribunal cannot be settled. Therefore, unless the same is done and the constitution of the present arbitral tribunal is decided by the co-ordinate Bench, the question of granting extension to the present arbitration tribunal does not and cannot arise.

18. Accordingly, the prayer sought in the present petition cannot be allowed and the petition bearing AP/295/2022 is dismissed.
19. The parties shall be at liberty to file an appropriate application before the Court subject to the decision of the Revisional Court in accordance with the law.
20. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities

(SHEKHAR B. SARAF, J.)