

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.22764 of 2019
(Through hybrid mode)**

M/S. Mahashakti Energy Ltd.

Petitioner

Mr. U. Ch. Behura, Advocate

-versus-

M/S. OPTCL

Opposite Party

Mr. S. P. Mishra, Senior Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

01.08.2022

Order No.

- 07. 1.** Mr. Behura, learned advocate appears on behalf of petitioner. He had moved the writ petition on 4th July, 2022 to submit, interference is required with judgment dated 21st October, 2019 passed by the District Judge in rejecting his client's application for extension of mandate. He referred to certified copy of resolution taken by his client (claimant) on 10th January, 2017. He pointed out, it was further resolved that both Mr. Tathagat Mohanty and Mr. Upagupt Mohanty are signatories to the contract documents signed on behalf of the joint venture and on behalf of the company. Both the persons were duly authorized by the company to act as its authorized signatories, with authority to sign singularly.
- 2.** On query from Court he referred to procedural order no.1 dated 25th May, 2017 passed in the reference, wherein, inter alia, Mr. Tathagat Mohanty's appearance was recorded, as power of attorney holder of petitioner-claimant. He prayed for and obtained leave to file additional

affidavit, to disclose the application made under section 29-A, Arbitration and Conciliation Act, 1996. His further submission was, order dated 3rd December, 2018 in I.A. no.14690 of 2018 made by coordinate Bench in WP(C) no.17308 of 2018 (OPTCL v. Arbitral Tribunal), relied upon in impugned judgment has no connection with proceeding of present reference.

3. Additional affidavit was filed. Today Mr. Behura relies on annexure thereto being the application dated 24th April, 2018 signed by Upagupt Mohanty for extension of mandate. He draws attention to certified true copy of resolution dated 10th January, 2017 of Mahashakti Energy Limited. Relied upon resolutions are reproduced below.

***“FURTHER RESOLVED THAT** in continuation of the earlier Power of Attorney so executed, the subject appointment of the Authorized Signatories shall remain valid till recovery of all legitimate dues including interest on the invested project prior to premature short closure of the Projects by OPTCL, which caused financial distress for PPAL, are all fully received by the **Joint Venture Entitles of Udala, Sarasmal and Kuaramunda** from OPTCL. Further considering extensive and multiplicity of the, work in subject Projects, **the Authorized Signatories may operate singularly as demanded by the work requirements of the Projects. Both Mr. Tathagat Monanty and Mr. Upagupt Mohanty are signatories to the Contract Documents signed on behalf of the Joint Venture and on behalf of the Company;** subject appointments stand further validated for all Arbitration Proceeding including signing and filing of petitions, support documents, statements of claims continuation/seeking extension of time of the Arbitration through the Court etcetera in respect of*

all three Projects and these shall remain valid till withdrawn by the Resolution of the Board of Director. Acceptance of award and any other legal formalities thereof unless revoked/modified by the Company at any time with due written intimation to the Arbitral Tribunal, shall continue to be in force.(Supra).

RESOLVED FURTHER THAT Mr. Tathagat Mohanty & Mr. Upagupt Mohanty (Authorized Signatories) are also to act as authorized signatories (with authority to sign singularly) of the Company to file the Statement of Claims, sign and execute all documents pertaining to the arbitration, correspondences with the legal counsel, OPTCL, seek extension of time for arbitration proceedings, if required, sign necessary applications / petitions etcetera in various Courts of competent jurisdiction for any or all of the Projects as Specific Power of Attorney holders and Authorized Signatories of the Company i.e. M/s Mahashakti Energy Ltd.”

(Emphasis supplied)

4. Mr. Mishra, learned senior advocate appears on behalf of Odisha Power Transmission Corporation Limited (OPTCL) and submits, there were three projects. In respect of project at Kuarmunda there was one agreement and in respect of projects at Udala and Sarasmal, there was another agreement. These agreements were executed on behalf of petitioner by Tathagat Mohanty as constituted attorney. The agreements and all powers of attorney all stand disclosed in the record. He submits further, by resolution of petitioner dated 19th January, 2017, the earlier resolution dated 10th January, 2017 stood superseded. Relied upon resolution dated 19th January, 2017 is reproduced below.

“RESOLVED THAT the company had issued Specific Power of Attorney to M/S. Powercon Projects & Associates Ltd. for execution of OPTCL projects (PKG 616-06 & PKG 618-01) with Mr. Tathagat Mohanty as Authorized Signatory on 01.02.2010, 03.11.2010, 06.02.2011 valid upto completion of the projects & defect liability project or till revocation, which now stands further validated for the Arbitration filed for these projects till completion of the Arbitration process and acceptance of award and any other legal formalities thereof.

RESOLVED THAT Mr. Tathagat Mohanty (Authorized Signatory) be and are be hereby authorized to file the Statement of Claims and complete any other legal formalities arising out of the above stated contracts with OPTCL as Power of attorney holder and Authorized Signatory of M/S. Mahashakti Energy Ltd. on behalf of us and the Joint Venture.

FURTHER RESOLVED THAT Mr. Tathagat Mohanty, is hereby authorized to sign ad execute all documents pertaining to the arbitration, other claims on OPTCL, correspondences with the legal counsel, OPTCL and others which shall be accepted and ratified by us.

I, Ashok Kansal, as Chairman of this Board Meeting certify that the above resolutions were duly passed at the Bard Meeting of the Company held at the registered office on 19th of January, 2017 and have been duly signed in the accordance with the Articles of Association of the Company.”

5. Mr. Behura submits in reply that there was a writ petition regarding the other project at Udala and Sarasmal, wherein order dated 30th December, 2018 had been passed staying order dated 17th September, 2018 made by the arbitral tribunal. The order stayed was regarding direction to file statement

of claim. He submits, that order had no bearing or relevance to the arbitration reference in respect of the project at Kuarmunda. As such, impugned judgment is clearly wrong in being illegal and having had been passed with material irregularity.

6. It does appear from paragraphs 6 and 7 of impugned judgment that rejection of the extension of mandate petition was by reason of subsistence of order dated 30th December, 2018 passed by this Court staying order dated 17th September, 2018 of the tribunal. However, the proceeding regarding which extension of time was sought is a separate arbitral reference. Question arisen here was not answered by impugned judgment, regarding whether or not Upagupt Mohanty was duly authorized to make the application.

7. There was clear authority granted by the company on its resolution dated 10th January, 2017 to both Tathagat Mohanty and Upagupt Mohanty, given authority to sign singularly as authorized signatory of the company to, inter alia, seek extension of time for arbitration proceedings. Subsequent resolution dated 19th January, 2017 reiterates agreements executed by Tathagat Mohanty as authorized signatory. The resolution is a reiteration of said person acting as authorized signatory on behalf of the company. However, there is omission to rescind same authority also granted by earlier resolution dated 10th January, 2017. In fact, there is no reference to the earlier resolution.

8. It thus becomes clear that the company/petitioner had authorized Mr. Upagupta Mohanty to act as its authorized signatory, inter alia, to file pleadings in the arbitration proceedings. The arbitration proceeding being subject matter of this writ petition is different, from the one in which this Court, by coordinate Bench, had earlier passed order dated 30th December, 2018.

9. There is another aspect regarding extension of the mandate sought for by petitioner in the Court below. Mr. Mishra submits, the application was delayed as filed on 24th April, 2019. He draws attention to order no.17 dated 5th October, 2019 in the reference, wherefrom following is extracted and reproduced below.

“It may be noted that one and half years from the date of commencement of the proceeding expire on 10.11.2018. It is, therefore, incumbent upon the claimant to get extension of time from the appropriate court within 10.11.2018, as it will not be practicable to complete the proceeding by 10.11.2018, failing which, the Tribunal will become functus officio immediately after 10.11.2018.”

He submits, the mandate having one year after completion of pleadings and six months extension on agreement by parties, expired on 10th November, 2018. Explanation given in the application is factually incorrect, regarding suspension of work by learned advocates and other allegations made. Mr. Behura replies that the Court can extend the mandate prior to or after the

expiry, as provided in sub-section (4) of section 29-A.

10. This aspect was not brought before the Court below. However, since there already has been so much delay regarding adjudication of the disputes pending between the parties, Court proceeds to deal with controversy instead of restoring the application to the Court below. Perusal of the provision (section 29-A) reveals that the Court can, either prior to or after expiry of the period, extend it. This is provided by sub-section (4). Sub-section (5) says 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 by sufficient cause on such terms and conditions as may be imposed by the Court. It therefore appears that Court may itself extend the time. It can also do so on the application of any of the parties. The Court is to find sufficient cause and may impose such terms and conditions as it deems fit for the extension. The terms and conditions obviously relate to reasons attributable for the delay, caused by the arbitral tribunal or the parties themselves. In case it is attributable to the arbitral tribunal, Court may accordingly direct, upon giving opportunity to the tribunal, of being heard.

11. Nothing has been shown to satisfy Court that reasons for the delay is attributable to the tribunal. The parties themselves could not have their adjudication in the time specified. One of the parties has come to Court for extension being granted. Provisions in sub-sections (4) or (5) do not provide that in event a party approaches Court for extension of the mandate, it has to

do so before expiry of it.

12. Disputes up for adjudication in the reference cannot be left undecided.

Where opposite party is opposing the application, in event there is no adjudication by reason of expiry of the mandate, petitioner may find itself remediless. That is sufficient cause for Court to extend the mandate. As aforesaid, since no reason attributable to the tribunal has been demonstrated, no term or condition is required to be imposed. In the facts and circumstances, the Court below ought to have extended the time. In not doing so it acted illegally and with material irregularity. As such, impugned judgment is set aside and quashed.

13. Mr. Behura prays for extension period to be one year, within which time the reference should be concluded on award. The time limit for arbitral award is extended up to 31st July, 2023.

14. The writ petition is disposed of.

(Arindam Sinha)
Judge