

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2253-2022 (O&M)

Date of Decision: July 29, 2022

**THE DIRECTORATE OF DISTANCE EDUCATION, A VERTICAL
AND DEPARTMENT OF MAHARASHI DAYANAND UNIVERSITY
ROHTAK AND ANOTHER**

..... PETITIONER(s)

Versus

M/S. NYSA COMMUNICATION PVT. LTD.

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

**Present: Ms. A.S. Virk, Advocate
for the petitioner.**

LISA GILL, J.

This revision petition has been filed by the petitioner i.e. the Directorate of Distance Education, A Vertical and Department of Maharashi Dayanand University, for setting aside order dated 05.05.2022 (Annexure P-1), passed by the learned Additional District and Sessions Judge, Rohtak whereby application under Section 29A (4) and (5) of the Arbitration and Conciliation Act, 1996 (for short the Arbitration Act), filed by the respondent has been allowed and period for concluding arbitration proceedings has been extended by four months.

Brief facts necessary for adjudication of the matter are that an application under Section 11(6) of the Arbitration Act i.e. ARB-161 of 2017 was filed by the respondent for appointment of Sole Arbitrator. Said

application was disposed of by this High Court on 29.09.2017 while appointing Hon'ble Mr. Justice R.V. Easwar, a former Judge of the Delhi High Court as the Sole Arbitrator. Parties were directed to appear before the sole Arbitrator on 12.04.2018 for preliminary hearing. Timeline for arbitration proceedings was agreed upon between the parties as detailed in order dated 12.04.2018 of learned Arbitrator as under:-

“After a brief discussion, the following time-lines have been agreed by the parties:

1. Statement of Claim (SoC) to be filed within six weeks from today by the claimant.
2. Statement of Defence (SoD) to be filed, alongwith the counter-claim if any, by the respondent within 6 weeks thereafter.
3. The replies/rejoinders in both the claim and the counter-claim to be filed by both sides within 2 weeks thereafter.
4. Affidavit of admission/denial to be filed by both sides within 2 weeks thereafter.

The next hearing, after completion of the pleadings as directed above, is scheduled for 7th September, 2018 at 4:00 p.m. at the same venue (Ansal Bhawan). The parties shall file the list of witnesses along with their affidavits of evidence on that date. Further directions in the matter, including deposit of fees of the arbitral tribunal and scheduling of the hearings will be issued on that date.

The parties have agreed to dispense with the framing of issues.

The claim and the defence, including the counter-claim if any, will themselves be treated as issues.

The parties are requested to strictly adhere to the time-lines directed as above. The date on which the tribunal entered upon the reference shall be taken as 17th November, 2018. Parties may keep in mind that the award will have to be passed by 16th November, 2019 in terms of Section 29A(1) of the Act.”

Statement of claim was not filed by respondent-claimant till 07.09.2018, on which date a request was made for three months' time to file the statement of claim. This request was not accepted. Parties were directed by the Arbitrator to file a separate application/statement regarding extension of time for a period of six months in terms of Section 29A(3) of the Act. Respondent-claimant complied with the direction, however, present

applicants refused to give consent for extension of time beyond 12 months. Respondent-claimant was permitted to file statement of claim within a period of 12 days from 19.09.2018 with a further direction that present applicant would file its statement of defence and counter-claim, if any, within the next three weeks. Learned Arbitrator directed for listing the matter for hearing on 06.11.2018. Respondent, admittedly filed the statement of claim on 08.10.2018 with a complete copy to the applicants. Learned Arbitrator recorded the same on 24.10.2018. Applicant sought time for filing statement of defence and counter-claim on which four weeks' time was afforded. Learned Arbitrator on 24.10.2018 further observed that arbitration proceedings shall be subject to extension of time as period of arbitration would expire on 16.11.2018.

Respondent thereafter filed CM-11771-CII-2019 in ARB-161-2017 for extension of time for conclusion of arbitration proceedings. Said application was dismissed as withdrawn on 31.05.2019 with liberty to the said respondent to approach the Principal Civil Court as defined under Section 2(e)(i) of the Arbitration Act. Thereafter, application for extension of time was filed by the respondent on 09.07.2019 before the Principal Civil Court. Said application was strenuously contested by the applicant. However, learned ADJ, Rohtak, vide impugned order dated 05.05.2022 extended the time for conclusion of arbitration proceedings for another four months, which would be counted from the date of passing of the impugned order. Aggrieved therefrom this revision petition has been filed.

Learned counsel for the applicant vehemently argues that impugned order dated 05.05.2022 has been incorrectly passed without any

justification. It is contended that respondent was unable to point out any ground leave alone a special ground in terms of Section 29-A(5) of the Arbitration Act to justify extension of time for conclusion of arbitration proceedings. Respondent, it is further submitted, is only trying to delay the matter whereas the time-lines as agreed upon between the parties should have been adhered to strictly by the respondent. It is contended that learned Arbitrator in order dated 24.10.2018 clearly observed that directions given therein would be subject to any further orders regarding extension of time since time would expire on 16.11.2018. However, respondent chose to file application for extension of time only on 29.05.2019, after a lapse of so many months and thereafter said application was dismissed as withdrawn with liberty to file such application before the Principal Civil Court and again the respondent took more than one month for filing the application before the Principal Civil Court, Rohtak. It is contended that this shows that despite sufficient opportunity, respondent was negligent and no sufficient cause whatsoever could be displayed which justifies extension of time for conclusion of the proceedings. It is thus, prayed that this revision be allowed and decision dated 05.05.2022 (Annexure P-1), passed by the learned Additional District and Sessions Judge, Rohtak, be set aside.

Heard learned counsel for the petitioner and have gone through the file.

It is a matter of record that the learned Arbitrator was appointed vide order dated 29.09.2017, passed by this High Court on an application under Section 11(6) of the Arbitration Act, filed by the respondents. Though, specific time-lines were detailed by the learned Arbitrator on 12.04.2018 itself, as agreed upon by the parties, statement of claim was ultimately filed

by the respondent on 07.09.2018. Delay was sought to be explained by the respondents on the ground that certain vital documents pertaining to claim were found missing from the records. Earnest efforts are stated to have been made to trace out these documents at the old as well as the new offices of the applicants, at the offices of the respective counsel and other possible places. It is a matter of record that present applicant refused to give its consent for extension of time period beyond 12 months in terms of Section 29-A(3) of the Arbitration Act. Application filed under Section 29-A (4 & 5) of the Arbitration Act before this High Court was withdrawn on 31.05.2019 with liberty to approach the Principal Civil Court. Application was thereafter filed on 09.07.2019 before the Principal Civil Court of competent jurisdiction.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order dated 05.05.2022, which calls for any interference. Learned counsel for the petitioner is unable to point out as to how the respondent would have anything to gain by the delay in these proceedings. Learned Arbitrator did permit the respondent-claimant to file the statement of claim within a period of 20 days vide order dated 31.05.2019. Respondent indeed filed the statement of claim within the said stipulated period. In my considered opinion, sufficient ground has been made out for extension of time for completion of the arbitration proceedings. Learned counsel for the applicant is unable to point out anything to the contrary. No other argument has been addressed.

Accordingly, this revision petition is dismissed.

29.07.2022

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No