

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 156 OF 2022

DTL Ancillaries Limited

...Petitioner/
Claimant

Versus

SBI General Insurance Company Limited

...Respondent

Mr. Ashish T. Suryavanshi i/by Amol Nehru for the Petitioner.

Mr. Kunal Mehta, Ms. Nikita Vardhan and Ms. Nidhi Pathak i/by
Kanga & Co. for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 7 October 2023

ORDER :

1. By this Arbitration Petition, the Petitioner/original Claimant is seeking extension of mandate of the Arbitral Tribunal. Further, clarification has been sought whether pursuant to order dated 10th January 2022 passed by the Supreme Court and the order of this Court dated 9th June 2021, the mandate of the Arbitral Tribunal is still valid upto 30th June 2023.

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2. The Petitioner/original Claimant had preferred an Application under Section 11 of the Arbitration Act for appointment of Arbitrator. By order dated 30th July 2018 the Sole Arbitrator was appointed by this Court for deciding the disputes and differences between the Petitioner/Claimant and the Respondent in Arbitration Petition No. 30 of 2017.

3. The Arbitral Tribunal entered upon reference on 14th August 2018 and the pleadings were completed 12 months from date of entering upon reference. Evidence was led by both the parties.

4. In the minutes of meeting held on 18th July 2019, the parties consented to the extension of mandate of the arbitrator by six months. This extension of six months was from 14th August 2019. During the extended period of six months, Counsel for the Claimant commenced his final arguments in the matter which remained incomplete. Thereafter, the Counsel on behalf of the Claimant filed an Affidavit along with the list of documents and subsequent to which the Claimant concluded his arguments only reserving his right to argue on the points mentioned in the notes of arguments of the Respondent which was filed with the Tribunal. There were certain

subsequent dates fixed. However, due to personal difficulty on the part of the Claimant as well as on behalf of the Respondent, those dates were cancelled. It is the contention of the Respondent herein that the Claimant had done nothing to take the arbitration forward from 8th January 2021.

5. The Claimant had filed Application under Section 29A on 11th January 2021 seeking extension of the mandate of the Arbitral Tribunal. By an order dated 9th June 2021, this Court had granted extension of time to the Arbitral Tribunal for 18 months from 14th February 2020. Thus, the extension granted by this Court was till 14th August 2021. It is relevant to note that this was during the Covid pandemic.

6. There were further proceedings before the Arbitral Tribunal. An Application was filed by the Claimant under Sections 18 and 19 of the Arbitration Act for allowing the Claimant to re-advance arguments and grant extension of filing written submission. This was opposed by the Respondent. However, the Arbitral Tribunal allowed the Application on 29th July 2021 and granted extension of time to file the written submissions. The Claimant thereafter filed the written

submissions on 21st August 1991 and sought recasting some issues framed in the matter as set out in the written submissions which was objected to by the Advocates for the Respondent. The Respondent had also filed preliminary written submissions on 7th September 2021. Hearing in respect of re-casting of issues was held by the Arbitral Tribunal on 21st October 2021, wherein submissions were made by the Counsel for both the parties and the Tribunal was of the view that no amendment to the issues were necessary. Thereafter, the arguments continued on behalf of the Claimant which were concluded on 29th December 2021.

7. On 24th February 2022, the Counsel appearing for the parties addressed the Arbitral Tribunal as to whether the mandate of the Arbitral Tribunal came to an end. The Arbitral Tribunal was of the view that the mandate of the tribunal continued in light of the Supreme Court Order dated 10th January 2022 which had extended the period of limitation.

8. The Counsel for the Respondent has thereafter, substantially argued the matter. On 6th April 2022 the Claimant filed an Application for production of two documents which were objected

to by the Counsel for the Respondent on the ground that the same was belated. However, the Arbitral Tribunal permitted the production of documents. The Respondent thereafter concluded its arguments.

9. On 18th June 2022, the Counsel for the parties addressed the issue as to when the mandate of the Arbitral Tribunal comes to an end. According to the Counsel for the Respondent, the mandate of the Arbitral Tribunal comes to an end on 30th July 2022. This is in view of the order of the Supreme Court on 10th January 2022 and in particular paragraph 5(III) of the operative part thereof which extended period of limitation till 28th February 2022 and thereafter, period of limitation is 90 days from 1st March 2022 notwithstanding the actual balance period of limitation remaining. This being a case where the mandate of the Arbitral Tribunal would have expired during the period between 15th March 2020 till 28th February 2022.

10. This had been countered by the Counsel for the Claimant. His submission being that in the light of the order of this Court dated 9th June 2021 passed in the Arbitration Petition No. 25 of 2021, the extended period of limitation for passing of the Award

was extended upto 14th August 2021. Reliance was placed upon the second sentence of the said paragraph 5(III) and it was submitted that the longer period is to apply and the mandate of the Arbitrator has been continued till 1st July 2023.

11. The learned Arbitrator after considering the arguments, kept the Arbitration in abeyance with liberty to the Claimant to move this Court for appropriate orders. Accordingly, the present Arbitration Petition has been filed under Section 29A of the Arbitration Act on 21st July 2022.

12. It is the contention of the learned Counsel for the Respondent that the present Arbitration Petition was only served upon the Respondent on 19th September 2022. There is no urgency shown by the Petitioner/original Claimant, particularly, considering the above facts and Respondent having concluded the arguments before the Arbitral Tribunal on 6th February 2022.

13. The learned Counsel for the Respondent has submitted that in the event, this Court is inclined to grant relief sought for in the present Arbitration Petition, the Claimant is

required to bear the fees of the Arbitrator for the extended period till passing of the Award.

14. Having considered the submissions, in my view, the proceedings before the learned Arbitrator have almost reached a completion. The arguments of the Claimant and the Respondent have been almost completed and what remains is for the learned Arbitrator to pass an Award after hearing of the rejoinder of the Claimant. I am not inclined to accept the view taken on behalf of the Claimant that the mandate of Arbitrator is continued till 1st July 2023. It is clear from the paragraph 5(III) of the order dated 10th January 2022 that where the limitation has expired during the period between 15th March 2020 till 28th February 2022, all persons shall have a limitation period of 90 days from 1st March 2022. In the present case, by order of this Court dated 9th June 2021, the mandate of the Arbitral Tribunal was extended by a period of 18 months from 15th February 2020 till 14th August 2021. This period expired during the extended period of limitation. Thus, 90 days would be required to be computed from 1st March 2022 i.e. till 30th May 2022.

15. The learned Counsel for the Claimant has relied upon the last sentence of paragraph 5(III) of the order dated 10th January 2022, which provides that in the event, the actual balance period of limitation remaining with effect from 1st March 2022 is greater than 90 days, the longer period will apply that in that case. That is not the case herein as the extension of mandate had expiring during the extended period of limitation i.e. 15th March 2020 till 28th February 2022 and thus, the first part of paragraph 5(III) of the said order dated 10th January 2022 would in my view, apply and the limitation period of 90 days would have to be computed from 1st March 2022.

16. In that view of the matter, particularly considering what remains in the Arbitral proceedings i.e. for the Arbitrator to pass an Award after hearing the rejoinder arguments of the Claimant, I am inclined to extend the mandate of the Arbitrator. However, considering that there is substantial delay on the part of the Claimant in the filing of the present Arbitration Petition and which requires expeditious filing under Section 29A of the Arbitration Act, the relief sought for in the Arbitration Petition is granted subject to the Petitioner/original Claimant bearing the remainder of the fees of the

Arbitral Tribunal i.e. till passing of the Award. Accordingly, following order is passed.:-

- (i) Mandate of the learned Arbitrator is extended by a period of six months for passing of the Award in exercise of powers under Section 29A(4) and (5) read with 29A(1) of the Arbitration act.
- (ii) Fees of the Arbitrator for the remainder period i.e. till the passing of the Award shall be borne by the Petitioner/original Claimant.
- (iii) Arbitration Petition is accordingly, disposed of.
- (iv) There shall be no order as to costs.

[R.I. CHAGLA J.]