

Kavita S. J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.24 OF 2023

Royal Orchid Associated Hotels Private Ltd., ...Petitioner

Versus

GHK Hospitality & Infrastructure Ltd., ...Respondent

Mr. Biswadeep Chakraborty i/b Bimal Rajasekhar, Advocate for
Petitioner.

CORAM : R.I. CHAGLA, J.

DATE : 22ND DECEMBER, 2023.

ORDER :

1. By this Commercial Arbitration Petition, the Petitioner is seeking extension of mandate of the Arbitral Tribunal by a period of six months.

2. The Petitioner has stated that the Arbitral Tribunal was constituted pursuant to the appointment of Arbitrator vide order dated 10th August, 2018 and 16th August, 2018.

3. The Arbitrator has reached the stage of recording of cross examination of the Respondent.

KAVITA
SUSHIL
JADHAV

Digitally signed
by KAVITA
SUSHIL JADHAV
Date: 2023.12.27
01:41:30 +0530

4. During the pendency of the Arbitral proceedings, the parties had filed a joint request to the Arbitrator on 22nd August, 2019 for extension of time, as contemplated in Section 29-A(3) of the Arbitration Act. The extension of time of six months was granted.

5. The Petitioner has stated that at a meeting held on 20th February, 2020, the Arbitral Tribunal noted that the statutory mandate would come to an end on 24th February, 2020 and directed the parties to seek an extension of mandate before this Court.

6. The Petitioner has further stated that by amendment under Section 29A(1) in 2019 the time for completion of passing of Award and thereby completion of Arbitral proceedings would have to be computed from the date of completion of pleadings i.e. statement of defence and counter claim being filed. This amendment is retrospective in nature. Therefore, the amendment to Section 29-A of the Arbitration and Conciliation Act also applies in the present case.

7. The Petitioner has stated that the statement of defence and counter claim was filed on 24th November, 2018. The period of 12 months from completion of pleadings plus extension of 6 months by

mutual consent lapsed only on 24th May, 2020. This was during the outbreak of Covid-19. By virtue of the order of Supreme Court dated 10th January, 2022, the period between 15th March, 2020 to 28th February, 2022 for *inter alia* computing time period under Section 29-A of the Arbitration and Conciliation Act, 1996 stands excluded.

8. The Petitioner has stated that the extended period of arbitration came to an end on 8th May, 2022. Thereafter, the parties attempted to settle their dispute and as such had not taken steps to approach this Court to extend the period of arbitration. However, these attempts to settle the matter were unsuccessful.

9. The Petitioner has stated that the delay in approaching this Court is neither willful nor deliberate and that the Petitioner has an excellent case on merits and if the application is not allowed, the Petitioner will be unable to agitate its claim before the Arbitral Tribunal which exceeds Rs.3 Crores. The Petitioner will accordingly suffer financial loss and grave prejudice will be caused if it is unable to pursue its legitimate claims.

10. The Petitioner has stated that a period of six months would be sufficient for completion of the Arbitral proceedings and passing of

Award as the only pending matters in the arbitration is the cross examination of the Respondent's witness and final arguments by the Petitioner and Respondent and thereafter, passing of the Award. Thus, the arbitration is on the verge of completion.

11. The learned Counsel for the Petitioner has tendered an E-mail dated 18th October, 2023 which has been addressed by the Accounts Manager of the Respondent to the Advocate for the Petitioner wherein it is mentioned that the Respondent consents to the relief sought for in the Petition being granted i.e. extension of the Arbitrator's mandate by an additional period of six months. It is further mentioned in the E-mail that the Respondent shall not appoint an Advocate and this E-mail can be submitted by the Advocate for the Petitioner as consent before this Court. Accordingly, the E-mail dated 18th October, 2023 is taken on record and marked 'X' for identification.

12. Having considered the averments in the Arbitration Petition as well as consent of the Respondent by way E-mail dated 18th October, 2023, the relief sought for in the Arbitration Petition is granted. Hence, the following order is passed:

- (i) The mandate of the Arbitral Tribunal is extended by a period of six months from the date of this order.
- (ii) The Arbitration Petition is accordingly disposed of.

[R.I. CHAGLA, J.]