



2023 : DHC : 9491



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20.12.2023

+ **O.M.P.(MISC.)(COMM.) 675/2023 and I.A. 25759/2023**

IN THE MATTER OF:

MANJU KHANNA PRO
OF M/S MODELLA SHOP

..... Petitioner

Through: Mr. Ehraaz Jafar and Ms. Payal
Kakra, Advocates.

Versus

TATA AIG GENERAL INSURANCE CO LTD

..... Respondent

Through: Ms. Manvi Adlakha, Mr. Debashi
Dutta, Mr. Mrinal Ojha and Ms.
Anusha Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been instituted under Section 29A(4) of the Arbitration & Conciliation Act, 1996 (hereafter, '*the A&C Act*') read with Section 151 of the Code of Civil Procedure (hereafter, '*the CPC*') seeking extension of mandate of the learned Arbitral Tribunal (hereinafter, '*the AT*') by a period of six months for completion of the arbitral proceedings and passing of the arbitral award.

2. Pithily put, the petitioner had obtained an insurance policy from the respondent. Disputes having arisen, petitioner invoked arbitration and the AT was constituted on 18.12.2018. On 16.11.2019, the parties mutually

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consented to the extension of mandate of the AT by a period of six months, as recorded in the procedural order of the same date. The hearings before the AT were however rescheduled on account of the COVID-19 pandemic. Subsequently, the parties filed a petition being OMP(MISC.)(COMM) 221/2022 before this Court seeking extension of mandate and vide order dated 16.12.2022, the mandate was extended by a period of six months i.e., from 02.12.2022 to 01.06.2023. Again, vide order dated 26.05.2023 passed in another joint petition being OMP(MISC.)(COMM) 165/2023, the mandate was further extended by an additional period of six months w.e.f. 01.06.2023.

3. Admittedly, it is stated that the arbitral proceedings are at the stage of final arguments. Petitioner claims that though the AT had fixed the final hearing on 02.11.2023 and 23.11.2023, petitioner's counsel could not address submissions on account of a medical emergency. In this backdrop, petitioner seeks extension of the AT's mandate by a further period of six months.

4. Respondent however, has resisted the said prayer. The sole contention raised is that the present petition has been preferred after the expiry of the mandate and, is therefore not maintainable as the Court has no jurisdiction to entertain the same. The respondent puts reliance on the decision of Calcutta High Court in Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd.¹.

5. The Petitioner, in his rejoinder, has drawn attention of this Court to the fact that another decision of the Calcutta High Court dated 29.08.2023 passed in AP No. 448/2023 titled 'Vrindavan Advisory Services LLP v. Deep Shambhulal Bhanshali', following the dicta in Rohan Builders (Supra),

¹ 2023 SCC OnLine Cal 2645



has been stayed in SLP No. 24489/2023.

6. The contention raised by the Respondent merits rejection. This Court in Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation & Project & Anr.², while negating such a contention, observed as under:-

“xxx

22. I find the aforesaid argument to be wholly untenable. Section 29A(3) of the Act empowers the parties to extend the mandate of the tribunal by consent for a maximum period of six months without recourse to the Court. Section 29A(4) and 29A(5) of the Act, read together, empower the Court to do so for sufficient cause, on an application of any of the parties, when the period specified in subsection (1) or the extended period specified in sub-section (3) lapses. The plain words of the provision are clear- the power is available in both situations i.e. when the consensual extension under Section 29A(3) of the Act is granted, and when it is not. To read the requirement of consent in Section 29A(4) and 29A(5) of the Act, as suggested by Mr. Mishra, would make the requirement of sufficient cause irrelevant, and adjudication by the Court unnecessary. Such a construction does violence to the statutory provision, and permits a recalcitrant litigant to bring proceedings to an end, simply by withholding consent.

xxx”

7. The issue again arose for consideration in the judgement dated 06.11.2023 passed in OMP(MISC.)(COMM) 466/2023 titled “ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited”. The Court, while disagreeing with the view taken in Rohan Builders (Supra),

² 2023 SCC OnLine Del 2990



held as under:-

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16. No doubt, the purpose of Section 29A of the A&C Act is to prescribe and regulate the timelines for completion of the arbitral proceedings; however, a perusal of Section 29A of the A&C Act itself makes it clear that it does not contemplate any inflexible outer deadline for completion of arbitral proceedings, and affords flexibility to the contracting parties, and also to the Court for extension of the time period in appropriate cases. The purport of Section 29A of the A&C Act was clearly not to tie the hands of the parties or the court, and prevent extension of time even where warranted, simply because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiration of the deadline contemplated under Section 29A(1) or Section 29A(3) of the A&C Act. Had it been intended by the legislature to provide for a blanket prohibition on extension of time after the expiration of the period contemplated under Section 29A(1) or Section 29A(3) of the A&C Act (unless a petition under Section 29A(4) of the A&C Act was filed prior to expiry of the said period), nothing would have been easier than to say so.

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23. Thus, under Section 29A(4) of the A&C Act, the termination of the mandate of the arbitrator(s) is subject to the decision of the Court which may be “either prior or after the expiry” of the specified period. The Court would take a suitable decision upon a petition under Section 29A(4) of the A&C Act being filed. Such a petition can be filed either before expiry of the period referred to under Section 29A(1) or Section 29A(3) of the A&C Act or even thereafter. When the Court has been specifically empowered to grant the requisite extension even after expiry of the specified period, it would not be apposite to read a proscription in the statutory provision to the effect that a petition under Section 29A(4) of the A&C Act [seeking extension of time] must be filed before expiry of the specified



period and not thereafter. Such a proscription simply does not exist in the statute. On the contrary, as already noticed, the court has been empowered to grant an extension even after expiry of the specified period.

24. Even according to Rohan Builders (supra), as long as a petition under Section 29A(4) of the A&C Act is filed before the expiry of the time period referred to in Section 29A(1) or Section 29A(3) of the A&C Act, it is permissible for the Court to grant the extension of time even after expiry of the specified time period. This undermines the reasoning in Rohan Builders (supra) itself inasmuch as according to the said judgment, once the mandate of arbitral tribunal “terminates” upon expiry of the specified period, the same cannot be “extended” in the absence of a statutory provision for “revival” or “renewal” of the mandate.

25. The facts of the present case also illustrate that the dictum laid down in Rohan Builders (supra) can potentially thwart, rather than subserve the legislative intent. In the present case, there is no controversy that the learned sole Arbitrator has conducted the arbitral proceedings with expedition and despatch, and that there is ample justification for extending the time period for completion of arbitral proceedings and making of the arbitral award. The order dated 18.09.2023 passed by the learned sole Arbitrator even records the consent of the parties in this regard. To deny extension of time in such a case, only because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiry of the period set out in Section 29A(3) of the A&C Act besides being in the teeth of the language of Section 29A(4) of the A&C Act, seriously undermines the efficacy of the arbitral process and also impinges on party autonomy. Any interpretative exercise must therefore avoid this consequence.

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8. This Court is in complete agreement with the opinion of the



Coordinate Benches of this Court, which have a binding force. While it is true that Section 29A of the A&C Act seeks to prescribe and regulate the timeline for completion of the arbitral proceedings however, the same cannot be curtailed by way of any inflexible outer deadline. Keeping in mind the same, the interpretation as sought to be put forth by the respondent, runs contrary to the basic principles/ideals of the said section. As rightly stated in ATC Telecom (Supra), had the same been the intention of the Legislature, the same would have been clearly and expressly stated in the section. Thus, reading of any proscription upon the power of the Court to extend the mandate, as the respondent asks this Court to do, will run contrary to the legislative scheme and intent.

9. Resultantly, the mandate of the AT for concluding the arbitral proceedings and passing of the arbitral award is extended by a period of six months from 01.12.2023. The time period from 01.12.2023 till date is regularised.

10. Petition is disposed of alongwith miscellaneous application.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 20, 2023

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