



**CR-723-2021 &
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

105-2 cases

1.

CR-723-2021

Date of decision:22.10.2024

**M/S RAMTECH SOFTWARE SOLUTIONS PRIVATE LIMITED
...PETITIONER**

VERSUS

**HARYANA SPACE APPLICATION CENTRE (HARSAC) AND
ANOTHER ...RESPONDENTS**

2.

CR-724-2021

**M/S RAMTECH SOFTWARE SOLUTIONS PRIVATE LIMITED
...PETITIONER**

VERSUS

**HARYANA SPACE APPLICATION CENTRE (HARSAC) AND
ANOTHER ...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

**Present: Mr. Anand Chibbar, Sr. Advocate,
Mr. Amit Jhanji, Sr. Advocate with
Mr. Vaibhav Sahni, Advocate &
Ms. Eliza Gupta, Advocate for the petitioner.**

**Mr. Sumit Gupta, Addl. A.G.,
for respondent No.1.**

**Mr. Sharad Aggarwal, DAG, Haryana,
for respondent No.2.**



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SUVIR SEHGAL, J.

1. This order shall dispose of both the above-noted petitions as they involve common questions of law and facts.

2. For the sake of convenience, factual position is being taken from CR-723-2021.

3. Aggrieved by order dated 25.07.2019, Annexure P-1, passed by Special Commercial Court, Gurugram, petitioner has moved this Court by way of instant revision petition filed under Article 227 of the Constitution of India.

4. Factual background leading to the filing of the petition is that the petitioner was awarded two contracts for modernization of land records and an agreement dated 31.03.2011, Annexure P-2, was entered into. Some disputes arose between the parties and the respondents invoked the bank guarantee furnished by the petitioner, who filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, (for short “the Arbitration Act”), which was dismissed. Petitioner filed an appeal before this Court, which was disposed off vide order dated 12.12.2016, Annexure P-3, granting liberty to the parties to nominate their Arbitrators. Petitioner nominated a former judge of this Court vide letter dated 05.04.2017, Annexure P-4, under Arbitration Clause No.6.11. Respondent had already nominated Sh. Anurag Rastogi, IAS, Principal Secretary to Government of Haryana as an Arbitrator during the pendency of the appeal. Both the nominated Arbitrators held joint proceedings on 08.09.2017, Annexure P-9. Arbitral proceedings could not conclude within the statutory time limit and on 25.12.2018, respondents



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refused to give consent to the extension of time. The Arbitral Tribunal terminated the proceedings vide order dated 21.12.2018, Annexure P-21. Petitioner filed an application under Section 29-A of the Arbitration Act before the Special Commercial Court at Gurugram for extension of time, which after contest, has been dismissed vide order impugned herein.

5. While making a reference to the orders passed by the Arbitral Tribunal, learned senior counsel for the petitioner has contended that the delay in the conclusion of the arbitral proceedings is on account of the non-cooperative attitude of the respondents. He asserts that the delay occurred on account of pendency of miscellaneous applications and on some hearings, one of the Arbitrators was not available, which necessitated in the adjournments. It is also his argument that composition of an Arbitral Tribunal comprising of two members is violative of Section 10 of the Arbitration Act. Placing reliance upon the judgment of the Supreme Court in **Haryana Space Application Centre (HARSAC) and another Vs. Pan India Consultants Private Limited (2021) 3 SCC 103**, he asserts that the nominee of the respondent was a Principal Secretary to the Government of Haryana and was ineligible to be appointed as an Arbitrator in view of Section 12(5) read with Item No.5 of the Seventh Schedule of the Arbitration Act. He has also prayed that the nominee of the respondents be replaced and in the alternative has requested that a sole Arbitrator be appointed to adjudicate the dispute between the parties in order to save time and expense.

6. While supporting the order under challenge, counsel for the respondent submits that the work was to be completed by 31.12.2011 and



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despite grant of extensions, petitioner failed to complete the work. He submits that the penalty clause was invoked and the petitioner approached the Court challenging the encashment of the bank guarantee. It is his case that the delay in the conclusion of the arbitral proceedings is attributable solely to the petitioner as despite lapse of more than 15 months, petitioner failed to submit its statement of claim and there is no sufficient cause for extension of time for passing of the arbitral award.

7. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.

8. In a recent judgment, Supreme Court in **Rohan Builders (India) Private Limited Vs. Berger Paints India Limited** 2024 SCC Online SC 2494 has held that while adjudicating an application for extension of time under Section 29-A of the Arbitration Act, Court has to be guided by the principle of sufficient cause. The observations of the Supreme Court in Paras 15 and 16 of the judgment deserve to be noticed and are reproduced hereunder:-

“15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigant and render the timeline for making the award inconsequential. However, it is apposite to note that under Section 29A (5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the court in terms of the enactment acts as a deterrent against any party



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abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced. The first proviso to Section 29A (4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.

16. Lastly, Section 29A (6) does not support the narrow interpretation of the expression “terminate”. It states that the court - while deciding an extension application under Section 29A (4) – may substitute one or all the arbitrators. Section 29A (7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A (8) and 29A (9). The court in terms of Section 29A (8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A (9) stipulates that an application for extension under sub-section (5) must be disposed of expeditiously, with the endeavour of doing so within sixty days from the date of filing.”

9. The facts of the case have to be examined in the light of the observations reproduced above. A perusal of the orders passed by the Arbitral Tribunal show that the Arbitrators entered upon the reference on



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22.09.2017, Annexure P-10, half of the arbitral fee amount was paid by way of a cheque and counsel for the petitioner sought an adjournment to file the statement of claim. On 24.10.2017, Annexure P-11, the Government nominee, Sh. Anurag Rastogi, was not available as he was busy in the Haryana Vidhan Sabha session. An application for amendment of the orders passed by the tribunal qua the arbitral fee was filed by the respondents to which the petitioner filed his reply, Annexure P-13, on the next date of hearing. On 30.11.2017, Annexure P-14, petitioner requested for an adjournment and on 21.12.2017, Annexure P-15, the Arbitral Tribunal was of the opinion that the parties should sit together and resolve the dispute. On 01.03.2018, Annexure P-16, Arbitral Tribunal directed the petitioner to complete the work in three villages as per the contract before 21.03.2018. Petitioner filed an application, Annexure P-17, for modification of order, Annexure P-16, to which response was filed by the respondent during the course of proceedings on 28.05.2018, Annexure P-18. On 10.07.2018, Annexure P-19, proceedings were adjourned as the counsel for the respondent was not available to address arguments on the application moved by the petitioner and on 28.08.2018, Annexure P-20, proceedings were adjourned as Mr. Rastogi, the second arbitrator, was not available. In the meantime, statutory time period for culmination of the proceedings expired and respondents refused to give a consent for extension of the time period, which resulted in the termination of the proceedings vide order dated 21.12.2018, Annexure P-21.



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10. An analysis of the orders passed by the Arbitral Tribunal show that the delay in the conclusion of the proceedings cannot be attributed to the petitioner alone. No doubt, the petitioner did not file the statement of claim, but most of the proceedings were adjourned due to the non-availability of the respondents' nominee or on account of the deferment of the proceedings for adjudicating the miscellaneous applications moved by both the sides. This Court is, therefore, of the firm opinion that the petitioner has a sufficient cause for extension of time for conclusion of the arbitral proceedings and the judgment of the Supreme Court in ***Rohan Builders's case (supra)*** is attracted to the facts of the present case. The order passed by the learned Special Court, Gurugram, therefore, deserves, to be set aside to this extent and the time line for conclusion of the arbitral proceedings deserves to be extended.

11. This Court will not deal with the second prayer of the petitioner. Concededly, Mr. Arun Rastogi, IAS, is a Principal Secretary with the Government of Haryana. HARSAC-respondent No.1 is the nodal agency for Geographic Information System Application and Remote Sensing for the Government of Haryana. It awarded both the contracts and had entered into an agreement, Annexure P-1, with the petitioner. In ***Pan India Consultant's case (supra)***, Supreme Court held that the appointment of the Principal Secretary, Government of Haryana as a nominee of HARSAC-respondent No.1, which is a nodal agency of the Government of Haryana, is invalid under Section 12(5) read with the Seventh schedule of the Arbitration Act as he would have the controlling influence on the company being a nodal



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agency of the State. Exercising power under Section 29-A (6) of the Arbitration Act, the Supreme Court appointed a substitute Arbitrator to conduct the proceedings.

12. Following the dictum of the Supreme Court and in exercise of the said power, this Court nominates Justice (Retd.) M.S. Sullar, a former judge of this Court, as the sole Arbitrator to conduct the proceedings in continuation from the stage arrived at before the Arbitral Tribunal and to pass an award within a period of six months from the date of entering upon the reference, subject to the compliance of the statutory provisions.

13. With the above directions, both the petitions are disposed of.

14. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.

15. Needless to mention that all the questions arising between the parties shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

16. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) M.S. Sullar.

17. All pending application(s), if any, are disposed of.

22.10.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No