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

Judgment reserved on: 18.09.2024
Judgment pronounced on: 19.12.2024

+ **O.M.P. (MISC.)(COMM.) 41/2024**

M/S RCC INFRAVENTURES LTD & ORSPetitioners
Through: Ms Amrita Panda and Mr Udbhav
Gady, Advs.

Versus

M/S DMI FINANCE PVT LTD & ORS.Respondents
Through: Ms Geeta Luthra, Sr. Adv. with Ms
Shivani Luthra Lohiya, Ms Lalit
Mohini Bhat, Mr Nitin Saluja, Mr
Manas Aggarwal, Ms Ishita Soni, Mr
Pranya Madan, Ms Ishita Agarwal,
Ms Anirban Chanda, Mr B.S. Jakhar,
Mr Vikram Singh Jakhar, Mr Nihar
Dagar and Ms Varnika Sharma, Advs.
for R-1.
Mr Siddharth Khattar, Mr Divij
Andley and Mr Gaurav Parewa, Advs.
for R-2 and R-3 (through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The present petition has been filed under section 29 A (4) and (5) of the Arbitration and Conciliation Act, 1996 ("*A&C Act*") read with section 7 of the Commercial Courts Act, 2015 seeking extension of



the mandate of the Learned Sole Arbitrator for a period of one year for concluding the arbitral proceedings and passing the arbitral award.

Factual matrix

2. Petitioner Nos. 1 and 2 are group companies incorporated in the years 2011 and 2013 having their registered office at 14, Ground Floor, Vipul Agora, MG Road, Gurugram-122002, Haryana and are involved in the field of infrastructure development. Petitioner Nos. 3 and 4 are the Managing Directors of the petitioner nos. 1 and 2 companies respectively.
3. Respondent no. 1 is a Non-Banking Financial Company registered with the Reserve Bank of India and is in the business of providing loans and financial facilities to corporate entities in India.
4. Respondent no. 2 is a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 in the month of July 2018. It is stated that the respondent no. 2 was incorporated as a partnership between the petitioner no. 1 company and its one partner namely, M/s R.K. Infracorp Pvt. Ltd. for execution of fourlaning of 71 km of the Haridwar – Nagina section of the NH-74.
5. Respondent no. 3 is a company incorporated under the Companies Act, 2013 on 06.04.2015. It is stated that respondent no. 3 and one, namely, Mr. Jatin Mehndiratta are the partners of the respondent no. 2. On 05.01.2020, the respondent no. 3 company became the partner of the respondent no. 2 with a majority stake of 99%, and is in charge of the day-to-day affairs of the Respondent No. 2.
6. The disputes between the parties arise in relation to the Memorandum of Understanding and Reconstitution Deed dated 05.01.2020 executed



between the parties. The principle controversy between the parties is that as per the petitioners, the petitioners were coerced to execute the Memorandum of Understanding and the Reconstitution Deed dated 05.01.2020 which were executed to address the outstanding payments owed to various vendors, including sub-contractors and suppliers, in connection with the four laning of 71 km of the Haridwar – Nagina section of the NH-74.

7. Subsequently, the petitioners filed a petition under section 9 of the A&C Act being O.M.P.(I) (COMM.) 249/2020 and *vide* order dated 02.11.2020, the parties were referred to arbitration of Justice R. Banumathi (Retd.), Judge, Hon'ble Supreme Court of India. Consequently, the first procedural hearing in the arbitration took place on 27.11.2020.
8. On 15.09.2021, the parties were referred to mediation before the Delhi High Court Mediation and Conciliation Centre and the same was intimated to the Sole Arbitrator, however, the mediation between the parties failed and in the month of the November 2022, the petitioner approached the Sole Arbitrator to continue with the arbitral proceedings.
9. The pleadings in the arbitral proceedings came to be completed on 18.05.2022 and the period of one year for concluding the arbitral proceedings and passing of the arbitral award in terms of section 29 A (1) of the A&C Act began from the said date. The said period of one year expired on 17.05.2023. Thereafter, the parties by filing a joint memo in terms of section 29 A (3) of the A&C Act extended the mandate of the sole arbitrator by a further period of six months in



terms of Section 29A (3) of the A&C Act and the mandate of the Sole Arbitrator stood extended up to 31.08.2023. However, in the present matter the parties have stated that the mandate of the Sole Arbitrator was extended by a period of 6 months and stood extended to 16.11.2023.

10. It seems that there is some confusion with respect to when the mandate of the learned sole arbitrator stood expired. The procedural order dated 21.07.2023 contains both the dates i.e. 16.11.2023 and 31.08.2023. However, in order to avoid any confusion I am going by the date mentioned in the joint memo filed by both the parties seeking extension of the mandate of the sole arbitrator, whereby the parties agreed to extend the mandate of the sole arbitrator till 31.08.2024 only.

11. In the order dated 21.07.2023, passed by the Sole Arbitrator, the parties were directed to file an application under section 29 A (4) of the A&C Act seeking extension of the mandate of the Sole Arbitrator. The operative portion of the order dated 21.07.2023 reads as under:-

“3. Direction to file Application before the Court under Section 29A(4) seeking extension of time: The matter is pending for examination of the witnesses and number of witnesses are to be examined it will take some time for completion of the matter and passing of the Award. As the proceedings in the matter is ongoing and the recording of Evidence is yet to be completed/ Final Arguments are yet to be heard and since voluminous documents and oral Evidence is involved, the parties are further directed to file



an Application before the High Court of Delhi as prescribed under Section 29A (4) of the Act for extension of time for passing the award for a period of one year.”

12. Hence the present petition.

Submissions on behalf of the petitioner

13. Ms. Panda, learned counsel for the petitioners primarily submits that an application seeking extension of the mandate of the Arbitral Tribunal can be filed even after the expiry of the mandate of the Arbitral Tribunal. In this regard, she places reliance on ***Rohan Builders (India) Private Limited v. Berger Paints India Limited*** 2024 SCC Online SC 2494.

14. She further states that the delay in the arbitral proceedings is because the disputes raised in the arbitral proceedings require examination of financial transactions of a highly complex nature, involving submissions and analysis of expert reports. In addition, the records are voluminous in nature. Further, multiple witnesses are required to be examined with extensive oral evidence and cross examination.

15. She states that the delay in the arbitral proceedings was also because a considerable amount of time was expended on account of the parties being referred to mediation *vide* order dated 15.09.2021, after which the arbitral proceedings were stalled and it is only after the mediation failed, the arbitral proceedings commenced again in November 2022 i.e. after a period of one year. Furthermore, the entire computed fees of the Sole Arbitrator with respect to the claims has also been paid by the petitioners.

16. She further states that the respondent no. 1 had earlier also given its



consent in terms of section 29 A (3) of the A&C Act for extension of the mandate of the sole arbitrator and therefore, respondent No. 1 has waived any objections to the delays in the arbitral proceedings prior to July 2023.

17. She states that the respondent no. 1 has not made a single allegation against the Sole Arbitrator, or in the manner in which the arbitral proceedings have been conducted by the Sole Arbitrator. Hence, no cause has been shown by respondent no. 1 for either termination of the mandate of the sole arbitrator or reduction in fees payable to the arbitrator.
18. Learned counsel in order to support her arguments has also placed reliance on *Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project*, 2023 SCC Online Del 2990; *Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.*, 2023 SCC Online Del 4894; *ATC Telecom Infrastructure (P) Ltd. v. BSNL*, 2023 SCC Online Del 7135; *ATS Infrastructure Ltd. v. Rasbehari Traders*, 2023 SCC Online Del 86451; *PSA Protech & Infralogistics (P) Ltd. v. Food Corp. of India* 2024 SCC Online Del 5543; *KMP Expressways Ltd. v. IDBI Bank Ltd.*, 2024 SCC Online Del 2617 and *Power Mech Projects Ltd. v. Doosan Power Systems India (P) Ltd.*, 2024 SCC OnLine Del 4412.

Submissions on behalf of the respondent No. 1

19. Ms. Luthra, learned senior counsel vehemently opposes the contentions raised by the petitioners and states that the extension of the mandate of the Arbitral Tribunal should not be granted mechanically and the discretion of the court to grant such extension



should only be exercised when there is ‘sufficient cause’. In this regard, learned senior counsel places reliance on **Rohan Builders** (supra) and more particularly para 15 of the said judgment which reads as under:-

“15..... 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 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.....”

- 20.** She states that as per the joint memo filed seeking extension of the mandate of the sole arbitrator in terms of section 29 A (3) of the A&C Act, the mandate of the sole arbitrator stood extended upto 31.08.2023 and the present petition has been filed after an inordinate delay of 4 months.
- 21.** She further submits that *vide* order dated 21.07.2023, the sole arbitrator had directed the parties to file an application seeking extension of the mandate as the matter was pending for examination of witnesses and the record was voluminous, however, the petitioners did not file an application for extension of the mandate of the sole



arbitrator till 12.01.2024 and the petitioners have not given any explanation for such delay.

22. She states that the delay in the arbitral proceedings are attributable to the petitioners. Further, the petitioners have not explained the delay of 4 months in filing the present petition, despite clear directions given by the Sole Arbitrator in terms of the order dated 21.07.2023. Hence, the present petition should be dismissed.

Analysis

23. I have heard learned counsel for the parties.

24. It will be pertinent to mention the few relevant dates:-

02.11.2020	The Sole Arbitrator was appointed for adjudication of disputes between the parties.
27.11.2020	First hearing took place in the arbitral proceedings.
18.05.2022	Pleadings were completed by the parties.
17.05.2023	Mandate of the learned sole Arbitrator expired.
28.06.2023	The Sole Arbitrator directed the parties to file a joint memo for extension of the mandate of the Arbitral Tribunal.
21.07.2023	Mandate of the Arbitral tribunal stood extended upto 31.08.2023 and on the same date, the Sole Arbitrator directed the parties to file an application before the court seeking extension



	of the mandate of the sole Arbitrator.
31.08.2023	The mandate of the arbitral tribunal expired.
12.01.2024	The present petition was filed by the petitioners seeking extension of the mandate of the learned sole Arbitrator.

25. It is the case of the respondents that the extension under Section 29A of the A&C Act should not be granted mechanically but only in cases, where sufficient cause of delay in the arbitral proceedings has been shown.

26. The only issue before me is that whether the petitioner has shown sufficient cause for delay and whether the arbitral proceedings have been delayed inordinately on account of the acts of the petitioner. In this regard, reliance is placed upon the judgment laid down by the Hon'ble Supreme Court in **Rohan Builders** (supra) and more particularly paras 13 and 14 of the said judgment wherein the Hon'ble Supreme court *inter alia* held as under:-

“13. An interpretive process must recognize the goal or purpose of the legal text. Section 29A intends to ensure the timely completion of arbitral proceedings while allowing courts the flexibility to grant extensions when warranted. Prescribing a limitation period, unless clearly stated in words or necessary, should not be accepted. Bar by limitation has penal and fatal consequences. This Court in



North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd. observed:

“When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature's wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period.”

Courts should be wary of prescribing a specific period of limitation in cases where the legislature has refrained from doing so. If we give a narrow and restrictive meaning to Section 29A (4), we would be indulging in judicial legislation by incorporating a negative stipulation of a bar of limitation, which has a severe annulling effect. Such an interpretation will add words to widen the scope of legislation and amount to modification or rewriting of the statute. If the legislature intended such an outcome, it could have stated in the statute that - “the Court may extend the period only if the application is filed before the expiry of the mandate of the arbitrator, not after”. Indeed, there would have been no need to use the phrase “after the expiry of the period” in the statute. In other words, a rigid interpretation would amount to legislating and prescribing a limitation period for filing an application under Section 29A, when the section does not conspicuously so state. Rather, the expression and intent of the provision are to the contrary.



14. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29A (3). Narrow interpretation presents an additional challenge by relegating a faultless party to a fresh reference or appointment of an arbitrator under the A & C Act, thereby impeding arbitration rather than facilitating it. The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation. A narrow interpretation will be counterproductive. The intention is appropriately captured in the following observations made in the 176th Report of the Law Commission of India:

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“2.21.1 (...) But the omission of the provision for extension of time and therefore the absence of any time limit has given rise to another problem, namely, that awards are getting delayed before the arbitral tribunal even under the 1996 Act. One view is that this is on account of the absence of a provision as to time limit for passing an award.

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2.21.3 (...) *The time limit can be more realistic subject to extension only by the court. Delays ranging from five years to even fourteen years in a single arbitration have come to the Commission's notice. The Supreme Court of India has also referred to these delays of the arbitral tribunal. The point here is that these delays are occurring even in cases where there is no court intervention during the arbitral process. The removal of the time limit is having its own adverse consequences. There can be a provision for early disposal of the applications for extension, if that is one of the reasons for omitting a provision prescribing a time limit, say one month. Parties can be permitted to extend time by one year. Pending the application for extension, we propose to allow the arbitration proceedings to continue.(...)*

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2.21.4 *It is, therefore, proposed to implement the recommendation made in the 76th Report of the Law Commission with the modification that an award must be passed at least within one year of the arbitrators entering on the reference. The initial period will be one year. Thereafter, parties can, by consent, extend the period upto a maximum of another one year. Beyond the one year plus the period agreed to by mutual*



consent, the court will have to grant extension. Applications for extension are to be disposed of within one month. While granting extension, the court may impose costs and also indicate the future procedure to be followed by the tribunal. There will, therefore, be a further proviso, that further extension beyond the period stated above should be granted by the Court. We are not inclined to suggest a cap on the power of extension as recommended by the Law Commission earlier. There may be cases where the court feels that more than 24 months is necessary. It can be left to the court to fix an upper limit. It must be provided that beyond 24 months, neither the parties by consent, nor the arbitral tribunal could extend the period. The court's order will be necessary in this regard. But in order to see that delay in disposal of extension applications does not hamper arbitration, we propose to allow arbitration to continue pending disposal of the application.

2.21.5 One other important aspect here is that if there is a delay beyond the initial one year and the period agreed to by the parties (with an upper of another one year) and also any period of extension granted by the Court, there is no point in terminating the arbitration proceedings. We propose it as they should be continued till award is passed. Such a termination may



indeed result in waste of time and money for the parties after lot of evidence is led. In fact, if the proceedings were to terminate and the claimant is to file a separate suit, it will even become necessary to exclude the period spent in arbitration proceedings, if he was not at fault, by amending sec. 43 (5) to cover such a situation. But the Commission is of the view that there is a better solution to the problem.

The Commission, therefore, proposes to see that an arbitral award is ultimately passed even if the above said delays have taken place. In order that there is no further delay, the Commission proposes that after the period of initial one year and the further period agreed to by the parties (subject to a maximum of one year) is over, the arbitration proceedings will nearly stand suspended and will get revived as soon as any party to the proceedings files an application in the Court for extension of time. In case none of the parties files an application, even then the arbitral tribunal may seek an extension from the Court. From the moment the application is filed, the arbitration proceedings can be continued. When the Court takes up the application for extension, it shall grant extension subject to any order as to costs and it shall fix up the time schedule for the future procedure before the arbitral tribunal. It will initially pass an order granting extension of time and fixing the time frame before the arbitral



tribunal and will continue to pass further orders till time the award is passed. This procedure will ensure that ultimately an award is passed.”

- 27.** The Hon’ble Supreme Court in the aforesaid judgment has relied upon the 176th Report of the Law Commission of India, wherein it was held that the termination of the mandate of the Arbitral Tribunal results in waste of time, resources and money for the parties. The same is predicated on the fact that the parties and the Arbitral Tribunal have invested a lot of time, effort and energy in the arbitral proceedings. The essence of the A&C Act is a litigant-centric process to expedite the disposal of cases and reducing the cost of litigation.
- 28.** In the present case, the mandate of the Sole Arbitrator terminated on 31.08.2023 and the present petition was filed on 12.01.2024 i.e. after a period of four and a half months.
- 29.** To my mind, the said delay of four and a half months in filing the present petition is not an inordinate delay to direct that the mandate of the Sole Arbitrator should not be extended or a substitute arbitrator should be appointed.
- 30.** The pleadings in the arbitral proceedings have already been completed and the Claimants i.e. the petitioners have started its evidence. In this regard, my attention has been drawn to order dated 19.09.2023, whereby CW-1 is being examined. Further, the entire computed fees of the learned sole arbitrator with respect to the claims has been paid by the petitioners.
- 31.** For the said reasons, the petition is allowed and the mandate of the Sole Arbitrator is extended by a period of 1 year from the date of this



judgment.

32. The period from 31.08.2023 till today stands regularised.

33. The petition is disposed of accordingly.

JASMEET SINGH, J

DECEMBER 19,2024/priyesh