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

Date of decision:-12th January, 2024.

+ **O.M.P.(MISC.)(COMM.) 29/2023**

VIVEK AGGARWAL AND ANR. Petitioners
Through: Mr. Arjun Singh Bhati, Mr Gurdeep
Singh, Mr Abhinav Nagar, Advts.
versus

MR HEMANT AGGARWAL & ORS. Respondents
Through: Mr. Ratan K Singh Sr. Adv., Mr.
Nikhilesh Krishnan, Mr. Abhishek
Bhushan Singh, for R-1 (M.
7337603842)
Mr. Aditya Gupta, Mr. Jaspal Singh,
Ms. Namrah Nasir, Ms. Khushboo
Sharma, Mr. Abhisshek Singlla,
Advts. for R-3 (M. 9650969579)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition under Section 29A(5) of the Arbitration and Conciliation Act, 1996, (*hereinafter*, '1996 Act') filed by the Petitioners- Vivek Aggarwal and Alok Aggarwal seeks extension of time for completion of arbitration proceedings and rendering of the award, which are pending before the Id. Arbitrator since 2019.
3. A brief background of the present petition is that the parties who are partners in the firm - Time and Space Haulers ('TASH') firm, entered into a Memorandum of Settlement ('MoS') on 16th July, 2014. The said MoS



consisted of an arbitration clause. After disputes arose, arbitration was invoked in terms of Section 21 of the 1996 Act on 3rd November, 2015. Thereafter, the Respondent No.3 requested the earlier Arbitrator to recuse himself from arbitration in 2018. Following Id. Arbitrator's withdrawal, this Court appointed Justice Manju Goel, Former Judge, Delhi High Court, as the substitute arbitrator on 16th January, 2019.

4. According to the Petitioner, the proceedings before the Id. Arbitrator suffered several delays. Ultimately, pleadings were completed by 9th July, 2019. In the meantime, order dated 18th October, 2019 was passed by the Id. Sole Arbitrator allowing the Petitioners' application under Section 17 of the 1996 Act. The Respondent No.1 filed an appeal against the said order leading to further deferment of arbitration proceedings. The petition also states that due to the COVID-19 pandemic the arbitration proceedings were further delayed. The appeal **ARB.A.(COMM) 37/2019** titled '**Mr. Hemant Aggarwal v. Mr. Vivek Aggarwal**' was disposed of vide order dated 1st September, 2021. Arbitration proceedings further continued after disposal of the said appeal on 6th September, 2021.

5. However, due to previous deferments, the one-year period for passing the arbitral award, as per Section 29A (1) of the 1996 Act ended on 1st March, 2022. Hence, the first petition filed by the Petitioners under Section 29A(5) of the 1996 Act was allowed vide order dated 13th May, 2022 in **OMP (MISC) (COMM) No. 59/2022**, thereby extending the mandate of the Id. Sole Arbitrator till 31st December, 2022.

6. However, in 2022, the arbitration proceedings were again met with multiple delays due to various factors. On 7th October, 2022, the Id. Sole Arbitrator partly allowed an application under Section 17 of the 1996 Act by



Respondent No.3, further prolonging the process. Subsequently, there were requests for additional time to file evidence affidavits, notably on 19th October, 2022 and 26th November, 2022, leading to further postponements of the hearings. Additionally, on 24th November, 2022, Respondent No.1 filed an application challenging the impartiality of the Id. Sole Arbitrator, causing additional delays. Thus, the present is a second petition under Section 29A of the 1996 Act seeking extension of mandate.

7. Vide order dated 5th December, 2023, it was recorded by this Court that the Respondents heavily contest this petition. The said order reads as follows:

“2. The petition is sought to be vehemently opposed by the respondents on the ground that the learned Arbitrator has been acting in violation of the orders of this Court and therefore, the respondents are not agreeable to extension of her mandate. In support of his plea, learned senior counsel for the respondent no.1 relies on order dated 07.10.2022 passed by the learned Arbitrator and submits that she has acted in breach of this Court's order dated 01.09.2021 passed in ARB.A.(COMM) 37/2019, which appeal was filed by the respondent no.1 assailing the earlier order passed by the learned arbitrator on 18.10.2019.

3. Learned counsel for the petitioners submits that since the respondents had already unsuccessfully challenged the order dated 07.10.2022 vide ARB.A.(COMM) 82/2022, they cannot be now permitted to urge that the same had been passed by learned Arbitrator by ignoring this Court's order dated 01.09.2021.

4. In response, learned senior counsel for the respondent no.1 seeks to contend that the grounds, which are now being raised, were never taken before this Court in the ARB.A.(COMM) 82/2022. However,



this plea of the respondent is not borne out from the record and, therefore, the respondent no.1 is directed to place on record a copy of the appeal paperbook in ARB.A.(COMM) 82/2022 within a period of two weeks.”

8. The Respondents’ apprehensions are as follows:

- That the Id. Arbitrator is taking a view contrary to the orders passed by this Court in the appeal arising out of an order under Section 17 of the 1996 Act. The Id. Sr. Counsel for Respondent no.1 places reliance on an order dated 7th October, 2022 passed by the Id. Sole Arbitrator, alleging that the said order is in conflict with the Court’s order dated 1st September, 2021 passed in **ARB.A.(COMM) 37/2019** titled **‘Mr. Hemant Aggarwal v. Mr. Vivek Aggarwal’**.
- That certain original documents appear to be not traceable, though the same were allegedly sent by the earlier appointed Arbitrator to the present Arbitrator.
- That the Petitioners have not provided sufficient cause for the extension of time for the Id. Arbitrator to pass the award. Despite the Id. Arbitrator commencing work on 4th February, 2019, even after excluding the period affected by COVID and time spent on the appeal of Respondent no. 1, the commencement of evidence has not occurred. Such delay persists despite more than 18 months passing, with over 17 hearings held by the Id. Arbitrator.

9. On the other hand, the Petitioner submits as follows:



- That the Respondents had already unsuccessfully challenged the order dated 7th October, 2022 in **ARB.A.(COMM) 82/2022**. Thus, it is contended that the Respondents should not be allowed to claim that the Id. Arbitrator's order was passed in disregard of the Court's order dated 1st September, 2021.
- The Petitioners or their Counsels have not inspected the records of the earlier Id. Arbitrator, and therefore, cannot confirm or deny whether these documents (which are claimed to be misplaced) were transferred to the current Arbitrator, or if they are present on her record.
- Further, it would be inappropriate to decide the issue of bias in the present petition under Section 29A of the 1996 Act.

10. Heard. The scope of Section 29A of the 1996 Act is very limited, i.e. as to whether the extension of the mandate ought to be given or not. In **Wadia Techno-Engineering Services Limited. v. Director General of Married Accommodation Project (2023:DHC:3457)**, it was reiterated that the grievance of one of the parties with regard to the conduct of the arbitral proceedings, and a party's substantive challenge with regard thereto, are beyond the scope of adjudication in proceedings under Section 29A of the 1996 Act. The relevant portion of the said decision are extracted as follows:

*“23. Mr. Shukla advanced an equally untenable argument, when he suggested that the power under Section 29A(4) of the Act cannot be exercised on an application made after the expiry of the mandate of the arbitral tribunal. **The provision clearly provides that the Court may extend the period even after its expiry. Indeed, the second proviso provides that the mandate of the tribunal would continue until the disposal of***



such a petition. I see no justification in the text of the statute, or on a purposive interpretation thereof, to hold that the power can only be exercised on an application filed prior to the expiry of the mandate.

....

27. In the facts of the present cases, examined from this perspective, I do not find any grounds to withhold the extension sought. The proceedings have reached the stage of final arguments. It is clear that the learned arbitrator has proceeded with due expedition in the conduct of the proceedings. The respondent has sought extensions of time to comply with the directions of the learned tribunal from time to time, which have also been granted. At the very least, it appears that much time has been spent due to the respondent's requests for additional time to file pleadings, pay costs, and deposit arbitral fees. In fact, the respondent's reply in those petitions demonstrates its grievance that the learned arbitrator has not granted enough time to it for this purpose, which is quite contrary to any suggestion that the tribunal has not acted expeditiously. I, therefore, find that there is sufficient cause for extension of the mandate of the learned arbitral tribunal.

...

28. The grievance of the respondent is with regard to the conduct of the arbitral proceedings. They have articulated their grievances in the petitions filed under Article 227 of the Constitution, which remain pending. These considerations are entirely beyond the scope of adjudication in the present proceedings, as held in Orissa Concrete. The respondent's contention that those petitions would be rendered infructuous by an extension of the learned arbitrator's mandate in these petitions also does not commend to me. The manner in which the proceedings are being conducted, and the respondent's substantive challenge in that regard are not questions which can be agitated in these



petitions. It is always open to the respondent to take such remedies as available to it in law in this regard.”

11. Thus, insofar as the other issues are concerned which are raised the same cannot be considered in the present petition. The Respondent is stated to have filed an application under Section 13 of the 1996 Act before the Id. Arbitrator. Under such circumstances, this Court is of the opinion that it would not be appropriate to make any observations in respect of issues which are being considered under Section 13 of the 1996 Act, in the present petition which is under Section 29A of the 1996 Act.

12. The mandate of the Id. Arbitrator is accordingly extended for a period of one year in terms of Section 29A(4) of the 1996 Act. Needless to add, in respect of any decision on the application under Section 13 of 1996 Act, the parties are permitted to avail of their remedies in accordance with law.

13. Needless to add, observations made in an order under Section 17 of the 1996 Act, including orders dated 18th October, 2019 and the subsequent order dated 7th October, 2022 being orders passed under Section 17 of the 1996 Act, shall abide by the observations made by this Court in the order dated 1st September, 2021, which reads as under:

“5. The Arbitral Tribunal has clarified that nothing stated in the impugned order dated 18.10.2019 should be construed as an expression of any opinion on the merits of the case. In this view, the appellant cannot have grievance regarding any reasoning or finding recorded in the impugned order. Nonetheless, with the consent of the parties, this Court clarifies that the Arbitral Tribunal will examine the disputes between the parties uninfluenced by any opinion, prima facie or otherwise, expressed in the impugned order.

6. The learned counsel for the parties also agree that



all questions regarding admissibility of documents are open before the Arbitral Tribunal and the last sentence of Paragraph 43 of the impugned order would not preclude the parties from advancing their respective contentions before the Arbitral Tribunal. Needless to state that the Arbitral Tribunal shall consider the same afresh uninfluenced by any observations made in the impugned order.”

14. The Id. Arbitrator shall endeavour to ensure that no parties shall be granted unnecessary adjournment in this matter.

15. Petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

JANURARY 12, 2024

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