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

Date of decision: 13th February, 2024

+ **O.M.P.(MISC.)(COMM.) 92/2024 and I.A. 3399/2024**

AJANTA SOYA LIMITED

..... Petitioner

Through: Mr. Saaket Jain & Ms. Shivangi
Anand, Adv. (M: 8373925860)

versus

THE ORIENTAL INSURANCE COMPANY

..... Respondent

Through: Mr. Asim Vidyarthi, Adv. (M:
9821363939)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 3399/2024 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed copies of documents, etc. Original documents shall be produced/filed, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, the application is disposed of.

O.M.P.(MISC.)(COMM.) 92/2024

5. The present petition has been filed by the Petitioner under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*'), seeking extension of mandate of the arbitral tribunal till 15th April, 2024.

6. The Arbitral Tribunal was constituted in this matter on 29th October,



2020 and as per the ld. Counsel for the parties, the mandate expired in February, 2023 after excluding the period of the COVID-19 pandemic. It is noted that there is substantial amount of delay, despite the extension taken as per the order of the Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020*, which excluded the period from 15th March, 2020, to 28th February, 2022.

7. It is surprising to note that parties have approached this Court almost after a one year's delay for seeking extension of the mandate. Ld. Counsel for the parties submit that after February, 2023, the evidence was also recorded. However, the parties inadvertently missed out on giving consent for an extension of six months.

8. Even taking the six months period to be impliedly agreed to between the parties, the application is being moved with more than six months' delay. Though there can be no doubt that under Section 29A of the Act, extension can be granted by the Court, such a long period of delay in filing such an application is contrary to the spirit of Section 29A under the Act. The same has been elaborated in the case of *Department of Transport, GNCTD v. Star Bus Services Pvt. Ltd. (2023 SCC OnLine Del 2890)*. The relevant extracts of the said judgement are set out below:

"Spirit of the Arbitration Act

30. The Arbitration Act was enacted for providing a mechanism to the public to resolve their disputes in a process less rigorous, technical and formal than that of litigation. It has proven to be easier, more accessible, efficient and even cost effective for the parties involved, whether at an individual level or at the level of a business or corporation.



31. The alternative dispute mechanism is not only advantageous for the people involved in disputes but has also been aiding the effective disposal and release of burden on the Courts of the Country. The parties have a more hands-on involvement in an Arbitration process and play an active role in the adjudication process.

32. The Hon'ble Supreme Court in Union of India v. Varindera Constructions Ltd., (2018) 7 SCC 794, while discussing the object of arbitration held as under:—

“12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject-matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject-matter of arbitration unless injustice is caused to either of the parties.”

33. Therefore, expeditious and effective disposal of matters are most certainly considered the primary objectives of the enactment of the Arbitration Act. To



fulfil the objective of introducing the Arbitration Act, it has been deemed necessary by the legislature as well as the Hon'ble Supreme Court to limit interference by the Courts in the process of arbitration, whether before, during or after the conclusion of the proceedings.

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117. The award in matters is expressly mandated to be made by the learned Arbitral Tribunal within a period of twelve months from the date of completion of pleadings under Sub-Section (4) of Section 23. Section 23(4) states that the statement of claim and defense shall be completed within a period of six months from the date of appointment of Arbitrator.

118. Section 29A(4) stipulates that if the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period.

119. In the instant case, as the arbitral record suggests, the Statement of Claim was filed on 30th June, 2016 and the Statement of Defence was filed on 1st August, 2016. There is no material on record to suggest that any extension whatsoever had not been made to extend the mandate of the learned Arbitrator, nor an application under Sub-Section (5) was pending before any Court.

120. Applying the aforementioned position of law to the facts and circumstances of this case, it is evident that vide Procedural Order No. 10 dated 8th September 2018, the learned Sole Arbitrator noted that the hearing has been concluded and accordingly, the case was closed for writing and pronouncing the award. The award was passed on 9th June, 2020.



Therefore, there is a substantial gap of more than 1.5 years between the date of reserving the award and the date of award.

121. One of the principal reasons for ensuring that the arbitral award is rendered within a reasonable period of time is to ensure that the efficacy of oral submissions is not lost. A large time gap between hearing of the oral submissions and rendering the decision would, in effect, debilitate the purpose of resorting to arbitration for expeditious adjudication of the disputes. No person can be expected to remember the same after a long period of time. In the instant case, the delay has not even been explained by the learned Arbitrator in the said award.

122. Therefore, the award stands vitiated on two terms, firstly for an inordinate, unexplained and substantial delay of more than 1.5 years from the date on which the award was reserved, thus being in contravention of public policy of India; and Secondly, by virtue of the provision of Section 29A(1) read with Section 29A(4), the award is in the teeth of law due to the lack of jurisdiction of the arbitrator which stood terminated in accordance with the said provisions.

CONCLUSION

123. India has long hoped to become an arbitration hub and providing time bound mechanisms for resolving disputes will certainly be a feather in the cap. Introducing Section 29A by way of amendment is therefore intended to ensure that the disputes in arbitration are adjudicated in a time-bound manner. As already discussed, Section 29A of the Act mandates that all proceedings must be completed within a period of 12 months starting from the date when the arbitral tribunal enters upon reference. A further 6-month extension may be granted by the



consent of the parties. However, after this period ends, the mandate of the tribunal stands cancelled unless extended by a civil court.

124. As noted at the very outset, the impugned award was rendered after an inordinate, substantial and unexplained delay by the learned Sole Arbitrator, and the provision of Section 29A(1) and the bar of Section 29A(4) which states that the mandate of the Arbitrator shall be terminated, this Court is of the view that the impugned award is vitiated by patent illegality and is in conflict with the public policy of India. The impugned award is, therefore, set aside.

9. Ld. Counsels for the parties submit that the award is actually ready and they have been informed by the Arbitral Tribunal on 17th December, 2023 to seek an extension.

10. In the facts and circumstances of the case, where the award itself is ready, and the initial reference was during the COVID-19 pandemic, this Court deems it appropriate to extend the mandate of the Arbitral Tribunal till 31st March, 2024.

11. Petition is disposed of in these terms. All pending application(s), if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 13, 2024

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