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

+ **O.M.P.(MISC.)(COMM.) 375/2024**

KONE ELEVATOR INDIA PVT LTD. Petitioner

Through: Mr.Kapil Kher, Adv.

versus

DELHI AIRPORT METRO EXPRESS PVT LTD.

..... Respondent

Through: Mr.Varun Chandio, Adv. (through
VC)

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

28.05.2024

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I.A. 10594/2024 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

O.M.P.(MISC.)(COMM.) 375/2024

1. By way of the present petition filed under Section 29A of the Arbitration and Conciliation Act, 1996, the petitioner seeks extension of mandate of the Arbitral Tribunal by a period of one year.
2. Learned counsel for the petitioner submits that the mandate of the Arbitral Tribunal has expired on 10.03.2024.
3. Learned counsel for the respondent has opposed the extension of the mandate on the ground of the pendency of *Rohan Builders (India) Private Limited vs Berger Paints India Limited (SLP(C) No.*



023320/2023)before the Hon'ble Supreme Court of India. Secondly, learned counsel for the respondent submits that the claims raised by the claimant was time barred and therefore while granting an extension the issue of limitation must be taken into consideration.

4. I consider that both the contentions of the learned counsel for the respondent are liable to be rejected out-rightly.
5. The coordinate Bench of this Court in the matter ***ATC Telecom Infrastructure Private Limited vs Bharat Sanchar Nigam Limited (OMP.(MISC)(COMM) 466/2023 & (OMP (MISC)(COMM) 467/2023***) has inter-alia held as under:

“12. Per contra, the Calcutta High Court in Rohan Builders (supra) has taken a view that if an arbitral award is not rendered within the timeline contemplated under Section 29A(1) and/or Section 29A(3) of the A&C Act, the mandate of the arbitral tribunal stands terminated and that after such termination of the mandate, it is no longer possible to entertain a petition under Section 29A(4) of the A&C Act. As such, it is incumbent for the parties to file a petition under Section 29A(4) of the A&C Act prior to the expiry of the mandate of the arbitral tribunal and that it is no longer possible to seek an extension of the mandate after expiry thereof.

13. A perusal of the judgment of the Calcutta High Court in Rohan Builders (supra), reveals that the following aspects weighed with the Court in that case:-

i. Unlike Section 28 of the Arbitration Act, 1940, Section 29A of the A&C Act contemplates strict timelines for making of the arbitral award and also introduces the concept of termination of mandate if the award is not made within the prescribed statutory timelines.[para 23 of Rohan Builders (supra)]



- ii. Taking note of the 176th Report of the Law Commission of India on the Arbitration and Conciliation (Amendment) Bill, 2001, it was held that whereas the recommendation of the Law Commission contemplated “suspension” of mandate after expiry of the period for completion of the arbitral proceedings, the statutory provision as engrafted in the statutory provision, as enacted, provides for “termination” of the mandate of the Arbitrator(s). The conclusion is therefore drawn that upon expiry of the timelines prescribed under Section 29A(1) and/or 29A(3) of the A&C Act, the mandate of the arbitral tribunal stands terminated and not merely suspended and that after expiry of such mandate, it is no longer possible to seek extension under Section 29A(4) of the A&C Act. [para 31 of Rohan Builders (supra)]
- iii. A court can extend the period of time for completion of the arbitral proceedings and making of the arbitral award only when the mandate of arbitrator is subsisting and not thereafter. [para 38 of Rohan Builders (supra)]
- iv. If the framers intended that the application for extension could be made at any time after expiry of the mandate, Section 29A(4) of the A&C Act, the same would not have used the expression “terminate” but “revive” or “renew”. [para 44 of Rohan Builders (supra)]
- v. Finally, the court found that the above interpretation is the only plausible interpretation of Section 29A(4) of the A&C Act inasmuch as any other interpretation would make the timelines for making an arbitral award inconsequential, thereby, defeating the object of Section 29A of the A&C Act itself viz. to expedite the conduct of arbitral proceedings. [para 55 of Rohan Builders (supra)]

14. The judgment of this Court in Wadia Techno-Engineering Services (supra) was sought to be distinguished in Rohan Builders (supra) by observing that Wadia Techno-Engineering Services (supra) “did not involve any issue on the significance of the word extend/extension/extending as used in section 29-A.”



15. Having carefully considered the judgment of the Calcutta High Court in *Rohan Builders (supra)*, I am unable to concur with the reasoning contained therein and the conclusion drawn in the said judgment. The reasons are enumerated hereunder.

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.

26. For all the above reasons, I am in respectful disagreement with the judgment of Rohan Builders (supra). I am also bound by the view taken by a Co-ordinate bench of this Court in Wadia Techno-Engineering Services (supra).

27. In the facts and circumstances of the present case, I find no impediment in granting a suitable extension of time for completion of the arbitral proceedings and making of the arbitral



award in respect of the first reference which is the subject matter of O.M.P.(MISC.)(COMM.) 467/2023 28. As far as the arbitral proceedings which are subject matter of O.M.P.(MISC.)(COMM.) 466/2023 is concerned, the said petition under Section 29A(4) of the A&C Act came to be filed before expiration of the time period contemplated under Section 29A(1) of the A&C Act for completion of the arbitral proceedings and making of arbitral award. As such, even according to the respondent itself, there is no impediment in granting suitable extension of time for completion of arbitral proceedings and making of the arbitral award.”

6. In ***Union Territory of Ladakh &Ors. Vs Jammu and Kashmir National Conference &Anr. (SLP (Civil) No. 18727/2023)*** the court inter-alia held as under:

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v 5 Pranay Sethi*, (2017) 16 SCC 680 . The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”*



7. Thus, merely a petition being pending before the Supreme Court does not give an opportunity to the respondent to get an adjournment. Secondly, the issue of limitation raised by the learned counsel for the respondent is out-rightly rejected being outside the purview of the jurisdiction of this court at this stage. The matter is still pending before the learned arbitrator. The respondent may raise this contention before the learned arbitrator and the same shall be dealt in accordance with law.
8. In view of the above, the present petition is allowed, and the mandate of the Arbitral Tribunal is extended till 31.12.2024. Further, the period lapsed from 10.03.2024 till date is also regularised.
9. The petition stands disposed of.

DINESH KUMAR SHARMA, J

MAY 28, 2024

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