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

+ **O.M.P.(MISC.)(COMM.) 394/2024**

M/S AXALTA COATING SYSTEMS INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Ayushman Singh and Mr. Aditya
N. Prasad, Advocates.

versus

M/S SANGA AUTOMOBILES PVT. LTD. AND ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.05.2024

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By way of the present petition filed under section 29A(4) and (5) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks extension of the mandate of the learned Sole Arbitrator, who is seized of their disputes with the respondents.

2. Mr. Ayushman Singh, learned counsel appearing for the petitioner submits, that the learned Sole Arbitrator was appointed by way of order dated 07.12.2021 made in ARB.P. No.932/2021 passed by this court and has been seized of the arbitral proceedings ever-since.
3. Mr. Singh submits, that the respondents were duly served by the Delhi International Arbitration Centre ('DIAC') in the arbitral proceedings since the proceedings were being conducted under the aegis of the DIAC. The respondents were represented through counsel; the



respondents filed their statement of defence in the arbitral proceedings; and subsequently issues were also framed in the presence of the respondents. Counsel points-out, that all this is recorded in order dated 27.02.2024 made by the learned Arbitrator.

4. Mr. Singh also points out that the matter was at the stage of cross-examination of claimant's witnesses; and during the course of hearing there were some talks between the parties for settlement of their disputes; and the matter was adjourned at the respondents' request for that purpose. However, when the matter was subsequently taken-up on 04.12.2023, counsel representing the respondents requested for withdrawal of his *vakalatnama*, whereupon he was directed to notify the respondents of his intention to do so.
5. Pursuant thereto, the respondents were informed about withdrawal of the *vakalatnama* by their counsel; and by way of abundant caution, the learned Arbitrator directed the DIAC to send a notice to the respondents; but the respondents refused to receive the notice. Thereafter the respondents also failed to participate or be represented in the arbitral proceedings.
6. It is submitted, that by reason of the above, *vide* order dated 27.02.2024, the learned Arbitrator set the respondents *ex-parte*.
7. Furthermore, learned counsel for the petitioner submits, that since the respondent had already been set *ex-parte*; the provisions of section 29A(3) of the A&C Act, providing for a consensual extension of the mandate, was ineffectual and could not have been put into operation.
8. Mr. Singh submits, that as recorded in order dated 19.04.2024 made by the learned Arbitrator, *ex-parte* arguments have now been



concluded in the matter and the petitioner (claimant in the arbitral proceedings) has been directed to file their written submissions.

9. In the circumstances, it is prayed, that no purpose will be served by issuing notice to the respondents, since it is evident from the record that they have been evading the proceedings despite being duly aware of the pendency of the proceedings and having participated therein earlier-on.
10. In view of what has been submitted on behalf of the petitioner; and based on the record, this court is of the view, that by the very nature of the wording of section 29A(3) of the A&C Act, that provision contemplates a situation where the mandate of the learned Arbitrator is extending by *consent* of the parties; and the provision does not contemplate a unilateral extension by one of the parties since that would do violence to the very wording and intent of the section.
11. In the circumstances, the correct course of action for a party to an arbitration, which is proceeding *ex-parte*, is to approach the court to seek extension of the mandate, as has been correctly done by the petitioner in the present case.
12. In the circumstances, the court is persuaded to agree with the submission made that there is no purpose in issuing notice to the respondents.
13. Consequently, the petition is allowed, thereby extending the mandate of the learned Arbitrator by 04 months, with effect from today, as has been prayed-for. Any arbitral proceedings conducted after the expiry of the previous mandate on 20.04.2024, shall also stand validated and regularised.



14. The petition is disposed-of.
15. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 16, 2024/ak