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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(MISC.)(COMM.) 517/2023
PSA PROTECH AND INFRALOGISTICS PVT. LTD..... Petitioner
Through: Ms. Ruchi Jain, Mr. Amogh Bansal,
Advvs.

versus

FOOD CORPORATION OF INDIA Respondent
Through: Mr. Manoj, SC with Ms. Aparna
Sinha, Mr. MT Reddy, Advvs.

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+ O.M.P.(MISC.)(COMM.) 518/2023
MACHEDA LOGISTICS INDIA PVT. LTD Petitioner
Through: Ms. Ruchi Jain, Mr. Amogh Bansal,
Advvs.

versus

FOOD CORPORATION OF INDIA Respondent
Through: Mr. Manoj, SC with Ms. Aparna
Sinha, Mr. MT Reddy, Advvs.

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+ O.M.P.(MISC.)(COMM.) 519/2023
ALOMPCM INFRASTRUCTURAL AND LOGISTICS PVT. LTD
..... Petitioner
Through: Ms. Ruchi Jain, Mr. Amogh Bansal,
Advvs.

versus

FOOD CORPORATION OF INDIA Respondent
Through: Mr. Manoj, SC with Ms. Aparna
Sinha, Mr. MT Reddy, Advvs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
21.02.2024

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1. These are the petitions seeking extension of time for completion of the arbitration proceedings in “PSA Protech and Infralogistics Pvt. Ltd. Vs. Food Corporation of India”.



2. It is stated by Ms. Jain, learned counsel for the petitioners that in the present petition, the statutory period of 12 months in terms of Rule 24A(1) of the International Centre for Alternative Dispute Resolution expired on 13.12.2019.

3. *Vide* order dated 23.11.2019 passed by the Arbitral Tribunal, the mandate was extended for 6 months. However, on account of COVID-19 pandemic and in view of the judgment of the Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No. 3/2020, the period from 15.03.2020 to 28.02.2022 was excluded from the period of limitation. The benefit granted by the Hon'ble Supreme Court expired on 28.05.2022.

4. The parties were still proceeding with the arbitration. On 12.05.2023, the date of 14.05.2023 was cancelled and no date was fixed. Thereafter, the Arbitral Tribunal listed the matter on 18.02.2024.

5. In the meanwhile, the petitioner realising that the time has expired, has moved the present petition on 04.10.2023.

6. Mr. Manoj, learned standing counsel for the respondent has objected to the grant of time.

7. He states that in terms of 29A(5) of the Arbitration and Conciliation Act, the court may extend the time **only** if sufficient cause is shown.

8. Section 29A(5) of Arbitration and Conciliation Act reads as under:

“ 29A. Time limit for arbitral award-

...

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

...”



9. He further states that in the present case, the petitioner has been lackadaisical in prosecuting the arbitration proceedings and no sufficient cause has been shown to grant extension of time. It is stated that arbitration proceedings were going on even during the COVID-19 pandemic through VC and it is the petitioner who has been taking adjournment and also filing frivolous applications.

10. Lastly, he relies upon the judgment of a Coordinate Bench of this Court titled as “*Skylark Cagers India Pvt. Ltd. vs. Institute of Liver and Biliary Sciences*” [(2023) SSC OnLine Del 1276].

11. I have heard learned counsel for the parties.

12. Admittedly, in view of judgment of the Hon’ble Supreme Court in *Suo Motu* Writ Petition (C) No. 3/2020, the mandate of the Arbitral Tribunal expired on 28.05.2022. However, the fact remains that both the parties as well as the Arbitral Tribunal were under a mistaken belief that the mandate has not expired and were continuing with the arbitration proceedings till 30.04.2023. Even thereafter, the Arbitral Tribunal has given a date of 18.02.2024.

13. The judgment of *Skylark Cagers India Pvt. Ltd* (supra) is distinguishable as in that case, the Arbitral Tribunal *vide* order dated 14.10.2017 requested extension of time from this Court in order to conclude the Arbitration proceedings. The petition seeking extension of time was filed after 17 months of the order dated 14.10.2017. In the present case, the facts are distinguishable as both the parties were actively participating in the arbitral proceedings till 30.04.2023.

14. A Coordinate Bench of this Court in “*ATS Infrastructure Ltd. and Anr. vs. Rasbehari Traders* ” [O.M.P. (T) (COMM.) 91/2023] has differed



from the view taken by “**Rohan Builders (India) (P) Ltd. vs. Berger Paints India Limited**” [(2023) SCC OnLine Cal 2645] to hold that the application under Section 29A of the Arbitration and Conciliation Act can be allowed even after the expiry of the mandate of the Arbitral Tribunal. The operative paras are reproduced below:

“6. The Court has considered the aforementioned submissions, and it is not inclined to accept that Section 29A bars applications submitted after the expiry of the mandate from being entertained. The language of the provision is clear; “...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...,” which plainly provides that an application under Section 29A may be allowed even after the expiry of the mandate. Relevant portions of Section 29A is reproduced below to aid the reading of our analysis:

“29A. Time limit for arbitral award.--(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23: Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

...

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) 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: Provided that while extending



the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay. Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

...” (emphasis supplied)

7. Our observations are supported by ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited , whereby this Court has categorically held that grant of extension of time is permissible even if the petition under Section 29A has been filed after the expiry of the time period. The judgment in ATC Telecom (supra) categorically disagreed with the findings in Rohan Builders (supra) relied upon by the ATS Group. The Calcutta High Court in Rohan Builders (supra) held that petitions seeking extension of time cannot be entertained after the expiry of the mandate, on grounds



that the legislature has explicitly introduced the word ‘terminate’ in Section 29A(5), as opposed to ‘revival’ or ‘renewal’ of arbitral proceedings upon filing of the extension application. The Court also drew attention to the proposed provisions in 176th Law Commission Report, the language of ‘suspension’ of mandate was deliberately not chosen in favour of ‘termination’.

8. This Court, in ATC Telecom, disagreed with the view taken in Rohan Builders, observing that no explicit outer limits have been prescribed in Section 29A, and that it clearly provides for extension in appropriate cases. Indeed, the intention is evidently not to prescribe inflexible timelines and eliminate the discretion of the Court; if it were so, specifying that explicitly would have been simple. The recommendations of the Law Commission could not be relied upon and interpreted against the plain words of the statute.

9. The judgment of Datar Switchgears (supra) advanced by ATS Group is also wholly inapplicable to the present case. The dispute before the Supreme Court was based on an arbitration clause whereby unilateral right to nominate the arbitrator was given to one party, and the legal issue was whether such a right is forfeited when 30 days have elapsed, the party has not appointed an arbitrator before the other party has filed an application under Section 11. The provisions of Section 11 and Section 29A are not pari materia and the words of Section 29A(4) clearly provides for extension after the expiry of the period.

10. In light of the above, O.M.P.(MISC.)(COMM.) 462/2023 and O.M.P.(MISC.)(COMM.) 493/2023 are allowed and O.M.P. (T) (COMM.) 91/2023 and O.M.P. (T) (COMM.) 92/2023 petitions are dismissed and the mandate of Sole Arbitrator is extended by a period of one year from today in the following matters:

- (i) Arbitration Case No. 1/2021: Almond Infrabuild Private Limited & Anr v. Dalmia Family Office Trust;*
- (ii) Arbitration Case No. 2/2021: Domus Greens Private Limited & Ors v. Dalmia Family Office Trust;*
- (iii) Arbitration Case No. 3/2021: ATS Infrastructure Limited & Anr v. Dalmia Family Holdings LLP;*
- (iv) Arbitration Case No. 4/2021: Almond Infrabuild Private*



Limited & Anr v. Dalmia Family Office Trust;
(v) *Arbitration Case No. 5/2021: Anand Divine Developers Private Limited & Anr v. Dalmia Family Office Trust;*
(vi) *Arbitration Case No. 6/2021: ATS Housing Private Limited & Anr v. Dalmia Family Office Trust;*
(vii) *Arbitration Case No. 7/2021: Almond Infrabuild Private Limited & Anr v. Dalmia Family Office Trust;*
(viii) *Arbitration Case No. 8/2021: Anand Divine Developers Private Limited & Anr v. Dalmia Family Office Trust;*
(ix) *Arbitration Case No. 9/2021: ATS Housing Private Limited & Anr v. Dalmia Family Office Trust;*
(x) *Arbitration Case No. 10/2021: Geetamber Anand vs. Rasbehari Traders; and*
(xi) *Arbitration Case No. 11/2021: ATS Infrastructure Pvt. Ltd. vs. Rasbehari Traders.”*

15. The judgment of ***ATS Infrastructure Ltd. and Anr.*** (supra) was challenged before the Hon’ble Supreme Court in Special Leave to Appeal (C) No(s). 26990-26991/2023 and the Hon’ble Supreme Court directed that “*the arbitration proceedings will continue but no award will be passed.*”

16. Mr. Manoj, learned counsel for the respondent agrees with the ratio of ***ATS Infrastructure Ltd. and Anr.*** (supra) and states that the petitioner is within its right to approach the Court even after the expiry of the mandate, however, sufficient cause has to be shown.

17. According to me, sufficient cause for grant of extension of time has been shown.

18. For the said reasons and in view of the fact that the observations made by the Coordinate Bench in ***ATS Infrastructure Ltd. and Anr.*** (supra) have not been stayed, I am inclined to allow the petition for the following reasons:

i. Section 29A of Arbitration and Conciliation Act does not bar



applications to be submitted after expiry of the mandate of the Arbitral Tribunal. [(Reliance on *ATS Infrastructure Ltd. and Anr.* (supra)]

- ii. The Arbitral Tribunal even after expiry of the mandate conducted arbitral proceedings till 30.04.2023 wherein both the petitioner and the respondent actively participated, made submissions and proceeded with the arbitration.
- iii. The entire share of fee of the respondent has been paid and only some portion is outstanding from the side of the petitioner to the Arbitral Tribunal.

19. In view of my findings hereinabove, the petitions are allowed and a period of 3 months from today is granted to the Arbitral Tribunal to conclude the proceedings.

20. The petitions are disposed of with the above directions.

JASMEET SINGH, J

FEBRUARY 21, 2024/DM

[Click here to check corrigendum, if any](#)