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

Date of decision : 19.03.2024

+ **O.M.P. (T) (COMM.) 112/2022 & I.A. 18831/2022**

ADEPT POWER PVT LTD

..... Petitioner

Through: Mr Ravinder Singh, Advocate.

versus

BEAUX ARTS CONSTRUCTION SERVICES COMPANY

..... Respondent

Through: Mr. Rajiv Garg, Mr. Rajeev Kapoor, Mr.
Shivam Bharara and Ms. Seema Yadav,
Advocates along with Respondent.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

1. This is a petition filed under section 14(1)(a) and 14(2) of the Arbitration and Conciliation Act, 1996 seeking an order terminating the mandate of the Arbitral Tribunal.

2. The facts are that one Crompton Greaves Ltd. awarded the contract for construction of Uttar Pradesh Power Transmission Corporation Limited ("UPPTCL") 400kV substation at Muradnagar, Uttar Pradesh to a company named Kunj Power Projects Private Limited. Kunj Power Projects placed a conditional work order on the petitioner to complete the civil work at 400kV substation at Muradnagar specified in the Work Order bearing ref. no. W.O./400kV/Muradnagar/O1.

3. Pursuant to the work order dated 09.04.2014, the petitioner and the



respondent executed a Memorandum of Understanding (MoU) dated 01.05.2014 for materials and labour on covered area contract basis for the said project. On 28.06.2014, the petitioner and the respondent executed a Contract Execution Agreement to spell out the specific terms and conditions between the parties with regard to the work to be executed at the project.

4. It is stated that the Contract Execution Agreement contained the Arbitration clause. Since there were disputes between the parties, the respondent invoked the Arbitration clause.

5. On 19.10.2016, this Court in Arbitration Petition No. 566/2015 held as under:-

“1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 seeking the appointment of an Arbitrator for the adjudication of the disputes between the parties.

2. There is an arbitration clause in the agreement between the parties in terms of which payments were to be made to Petitioner for the work done by it. Invoking the said arbitration clause, a legal notice was sent on 14th September, 2015 by the Petitioner to Respondent No. 1 claiming inter alia that Respondent No.1 should pay to it a sum of Rs.2,13,14,578.36 towards the arrears of running bills after measurement of the final bill. In response to the said notice, Respondent No. 1 denied its liability and stated that till such time it receives payments from Crompton & Greaves Ltd. and Kunj Power Projects Private Limited on a back-to-back basis, it was not liable to make any payment to the Petitioner.

3. As the Court can see, there is clearly a dispute between the



parties arising out of the agreement between them. The Court, at this stage, is only required to examine under Section 11(6A) of the Act whether there exists an arbitration agreement. The Court is not expected to go into the merits of the petition or the counter-claims of the Respondents, if any. In law, therefore, there appears to be no legal basis for the Respondent to oppose the appointment of an arbitrator to refer the disputes arising between the parties.

4. Accordingly, this Court appoints Mr. Pradeep Chaddah (Mobile No. 991 0384665), a former District Judge, Delhi as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The learned Arbitrator will fix his own terms. The requirements of the Arbitration and Conciliation Act, 1996 as amended with effect from 23rd October, 2015 shall be complied with.

5. The parties will appear before the learned Arbitrator, in the first instance, on 16th November, 2016 at 4 pm at a venue to be organised by the Petitioner and the expenses for which will be shared equally by the parties.

6. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator forthwith.”

6. Pursuant to the same, the learned Sole Arbitrator entered reference and proceeded to adjudicate the claims between the parties.

7. Since, as per the petitioner, the period of one year as envisaged under Section 29A of the Arbitration and Conciliation Act, 1996 had expired, the petitioner filed an application under Section 29A of the Arbitration and



Conciliation Act, 1996 to terminate the proceedings. This application was dismissed by the learned Arbitral Tribunal. Hence the present petition.

8. The submissions of Mr. Singh, learned counsel for the petitioner are that:-

- a. There is no Arbitration Agreement between the parties.
- b. Even assuming that there is an Arbitration Agreement, the same has expired in view of Section 29A of the Arbitration and Conciliation Act, 1996.

9. He further draws my attention to the dates as under:-

<i>Dates</i>	<i>Events</i>
23.10.2015	<i>The amendment qua section 29A of the Arbitration and Conciliation Act, 1996 came effect</i>
19.10.2016	<i>The Ld. Sole Arbitrator was appointed as the arbitrator in the instant case on 19.10.2016, it was expressly observed in the order as under:- “...the requirement of the Arbitration and Conciliation Act as amended with effect from 23.10.2015 shall be complied with ...”</i>
16.11.2016	<i>The Ld. Sole Arbitrator took charge of the proceedings in the terms of the order dated 19.10.2016 of the Hon'ble Delhi High Court</i>
16.05.2017	<i>That the pleadings were complete in the present matter</i>
16.05.2018	<i>The period of 1 year came to an end as prescribed under section 29A(1) of the Arbitration and Conciliation Act, 1996</i>
16.11.2018	<i>Even the maximum extended period of six months has come to end as prescribed under section 29A(3) of the Arbitration and Conciliation Act, 1996 which can be done only with the consent of parties that has not been done in the present case.</i>

10. I have heard learned counsel for the parties.

11. The fact that there was an Arbitration Agreement between the parties or



not cannot be agitated at this stage. The order dated 19.10.2016 passed in Arbitration Petition No. 566/2015 categorically holds that there is an Arbitration Agreement and proceeded to appoint an Arbitrator. Thereafter, the petitioner participated in the arbitration proceedings, appeared and now cannot at this stage urge that there is no Arbitration Agreement.

12. As regards the arguments on Section 29A is concerned, the learned Arbitrator has held in order dated 03.11.2022 as under:-

“Now coming back to facts of the matter in hand, this Tribunal is not convinced with the stand taken by the Respondent in its application. Proceedings had commenced before notification of amendment. This position was upheld in above mentioned case of Republic of India Vs Augusta Westland International Limited CS (COMM) 9/2019 decided on 9.01.2019 (2019) SCC online Delhi 6419 by Hon'ble High Court of Delhi. Claimant had issued notice dated 14.09.2015 seeking appointment of Arbitrator. The notice was duly received by Respondent who sent request dated 17.09.2015 seeking three days time to file reply to the notice. It means that by 17.09.2015 Respondent had been served with notice seeking appointment of Arbitrator. So the provision of Section 29A of the Amendment Act, 2015 are not applicable to the proceedings in hand. Proceedings had commenced before the amendment in the Act came in force. The application deserves dismissal and is accordingly dismissed. The proceedings in hand shall continue.”

13. In the present case, the notice invoking Arbitration was issued on 14.09.2015, replied on 17.09.2015 and the petition for appointment of



Arbitrator was filed on 08.10.2015 i.e. much prior to 23.10.2015 when Section 29A came into effect.

14. The law is settled in this regard. Learned counsel for the respondent has rightly placed reliance on the judgment of the Hon'ble Supreme Court in ***Shree Vishnu Constructions v. Military Engg. Service, (2023) 8 SCC 329*** and more particularly on para 27 which reads as under:-

“27. Applying the law laid down by this Court in Parmar Construction Co. [Union of India v. Parmar Construction Co., (2019) 15 SCC 682 : (2020) 2 SCC (Civ) 390] and Pradeep Vinod Construction Co. [Union of India v. Pradeep Vinod Construction Co., (2020) 2 SCC 464 : (2020) 1 SCC (Civ) 579] and S.P. Singla Constructions [S.P. Singla Constructions (P) Ltd. v. State of H.P., (2019) 2 SCC 488 : (2019) 1 SCC (Civ) 748] to the facts of the case on hand as in the present case the notice invoking arbitration clause was issued on 26-12-2013 i.e. much prior to the 2015 Amendment Act and the application under Section 11(6) of the Act has been preferred/filed on 27-4-2016 i.e. much after the Amendment Act came into force, the law prevailing prior to the 2015 Amendment Act shall be applicable and therefore the High Court has rightly entered into the question of accord and satisfaction and has rightly dismissed the application under Section 11(6) of the Act applying the principal Act, namely, the Arbitration and Conciliation Act, 1996 prevailing prior to the 2015 Amendment Act. We are in complete agreement with the view taken by the High Court. It is observed and held that in a case where the notice invoking arbitration is issued prior to the 2015



Amendment Act and the application under Section 11 for appointment of an arbitrator is made post Amendment Act, 2015, the provisions of pre-Amendment Act, 2015 shall be applicable and not the 2015 Amendment Act.”

(emphasis added)

15. Further, the Co-ordinate bench of this Court in somewhat similar circumstances in ***Republic of India through Ministry of Defence v. Agusta Westland International Ltd., 2019 SCC OnLine Del 6419*** has held as under:-

“18. The question is - whether the time limits prescribed under Section 29A of the Act would apply to pending proceedings where arbitral proceedings have already commenced. The question of whether arbitral proceedings have been commenced is now settled i.e., the commencement takes place on the date on which a request for the disputes to be referred to arbitration, is received. Admittedly, in the present case, the notice invoking arbitration was issued on 4th October, 2013, when the Defendant invoked the Arbitration clause in the contract.

.....

27. The language of Section 26 of the Amendment Act is very clear. It clearly specifies that the Amendment Act of 2015 does not apply “to the arbitral proceedings commenced in accordance with provisions of Section 21 of the principal act”. Thus, if Arbitral proceedings have commenced under Section 21 of the Act, prior to coming into force of the 2015 Amendment Act, then Section 29A of the Act would not be applicable.”

16. I am in full agreement with the above observations as arbitral



proceedings initiated before the Amendment Act of 2015 took effect are not covered by Section 29A of the Arbitration and Conciliation Act, 1996. As in the present case, the notice invoking Arbitration and the petition seeking appointment of Arbitrator was filed before the Amendment came into effect. Therefore, Section 29A will not be applicable.

17. Mr. Singh relies on ***TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd., (2023) 5 SCC 421*** and more particularly on para 34 which reads as under:-

“34. The 2019 Amendment Act does not contain any provision equivalent to Section 26 of Act 3 of 2016 evincing a legislative intent making the application of the amended provision prospective. The amended provisions of Section 29-A, in terms of which the Arbitral Tribunal has to endeavour to dispose of the proceedings in an international commercial arbitration as expeditiously as possible within a period of twelve months from the completion of the pleadings are remedial in nature. The amended provision has excepted international commercial arbitrations from the mandate of the twelve-month timeline which governs domestic arbitrations. The amendment is intended to meet the criticism over the timeline in its application to international commercial arbitrations. The amendment is remedial in that it carves out international commercial arbitrations from the rigour of the timeline of six months. This lies within the domain of the arbitrator and is outside the purview of judicial intervention. The removal of the mandatory time-limit for making an arbitral award in the case of an international commercial arbitration does not confer any rights or liabilities on any party. Since Section 29-A(1), as amended, is remedial in nature, it should



be applicable to all pending arbitral proceedings as on the effective date i.e. 30-8-2019.”

18. The above cited judgment will not help the petitioner as ***TATA Sons (supra)*** addresses the contention that whether the timeframe as indicated in Section 29A would apply to the International Commercial Arbitration whereas admittedly, the same is not the issue herein.

19. Further, reliance placed on ***BCCI v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287*** by the learned counsel for the petitioner is also misconceived as the said judgment was dealing with section 34 and 36 of the Arbitration and Conciliation Act, 1996 (before and after amendment of Section 36 in 2015). The judgments of ***Shree Vishnu Constructions*** (supra) and ***Republic of India through Ministry of Defence*** (supra) squarely cover the issue in hand.

20. For the said reasons, the petition is accordingly dismissed.

21. All pending applications, if any, are hereby disposed of.

JASMEET SINGH, J

MARCH 19, 2024/MR
(Corrected and released on 16.04.2024)

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