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

+ **O.M.P.(MISC.)(COMM.) 599/2023 & I.A. 23053/2023**

WRITER BUSINESS SERVICES PVT LTD Petitioner
Through: **Mr. Achyuth Ajith Kumar, Mr.
Shyam Gopal, Advocates.**

versus

**IFFCO TOKIO GENERAL
INSURANCE COMPANY LTD** Respondent
Through: **Mr. Shivam Singh, Mr. Ishwar
Singh, Advocates.**

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER
12.02.2024

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1. By way of this petition under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks extension of the mandate of an Arbitral Tribunal which is in *seisin* of disputes between the parties under Record Management Services Agreement dated 01.04.2005.

2. I have heard learned counsel for the parties.

3. Mr. Shivam Singh, learned counsel for the respondent, makes the following submissions in opposition to the petition:

A. He submits that the proceedings have been delayed as the learned Arbitral Tribunal has not proceeded with due expedition. The respondent has, in fact, made an alternative submission, seeking substitution of the Tribunal;



B. That the present petition is not maintainable having been filed after expiry of the mandate of the tribunal.

4. As far as the question of delay is concerned, it is the admitted position that the arbitration clause was invoked by the petitioner on 26.05.2021 and the Arbitral Tribunal was constituted on 24.09.2021. The first preliminary hearing was held on 27.09.2021 and an order was passed on 02.10.2021 setting out the schedule for further proceedings.

5. The respondent has since filed two applications under Section 17 of the Act (on 24.12.2021 and 20.06.2022) which were both heard by the learned Arbitral Tribunal and rejected by orders dated 01.04.2022 and 15.02.2023. These orders were carried to this Court by the respondent, but its appeals under Section 37 of the Act were rejected by orders dated 11.05.2022 and 16.05.2023.

6. In the meanwhile, the petitioner filed its statement of claim on 06.11.2021. The respondent filed its statement of defence two months thereafter, on 07.01.2022, and also made a counter claim. The reply to the counter claim was filed on 05.02.2022 and parties have since filed affidavits in evidence of their witnesses. The petitioner also moved an application for amendment of the claim, which was allowed by order dated 15.02.2023. It is the admitted position that the effect of the amendment is to reduce the quantum of the petitioner's claim. Against the amendment of the claim filed on 03.03.2023, the respondent has filed its amended statement of defence on 03.06.2023.

7. Having regard to the aforesaid timelines, I do not discern any delay in conducting of the proceedings attributable to the learned Arbitral



Tribunal, so as to justify a rejection of the present petition or a substitution of the Tribunal. It is clear that the learned Arbitral Tribunal has heard and disposed of at least two applications of the respondent itself under Section 17 of the Act, and one of the petitioner for amendment of the claim. The respondent has also taken two months to file its statement of defence to the original claim and three months to file its statement of defence to the amended claim. An argument predicated upon delay, at the instance of the respondent, is therefore unmerited.

8. Mr. Singh submits that no hearings were held by the Tribunal between 13.07.2023 and 20.12.2022. However, during this period, one date i.e., 19.07.2023 was fixed, which was adjourned at joint request of the parties. This submission is, therefore, also not dispositive of the matter.

9. Mr. Singh submits that it was for the learned Arbitral Tribunal and the claimant to proceed expeditiously as the claimant is *dominus litis*. As noted above, I do not find any delay attributable to the learned Arbitral Tribunal in the circumstances of this case. However, it maybe mentioned that the respondent itself was also counter claimant and was equally responsible for the expeditious conduct of the proceedings.

10. The only other ground urged pertains to the fact that the petition was filed after the expiry of the mandate of the Tribunal. As far as this ground is concerned, this Court has clearly held, in *ATC Telecom Infrastructure Private Limited vs. Bharat Sanchar Nigam Limited* (2023 SCC OnLine Del 7135) [“*ATC Telecom*”], that a petition under Section 29A of the Act is, nonetheless, maintainable.

11. It is true that other High Courts have taken a contrary view but the



first of those judgments, *Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Ltd.* (2023 SCC OnLine Cal 2645) [“Rohan Builders”] by the Calcutta High Court has been expressly noticed in *ATC Telecom*, and this Court has expressed its dissent. Special Leave Petitions challenging *Rohan Builders*, and other judgments on the same point are pending before the Supreme Court, in which Supreme Court has passed interim orders.¹

12. Having regard to the fact that this Court has taken a clear view in *ATC Telecom*, which is not under challenge and no view inconsistent therewith having been expressed by the Supreme Court, I am unable to accept this submission.

13. For the aforesaid reasons, the objections of the respondent are rejected, and the application is allowed. The mandate of the learned Arbitral Tribunal is extended by a period of one year from today.

14. Learned counsel for the parties assure the Court that they will cooperate with the learned Arbitral Tribunal for the expeditious disposal of the proceedings.

15. The petition stands disposed of with the aforesaid observations.

PRATEEK JALAN, J

FEBRUARY 12, 2024

‘Bhupi’/

¹ *Rohan Builders (India) Private Ltd. vs. Berger Paints India Ltd and connected matters* [SLP (C) No. 23320/2023 and connected matters]