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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th February, 2024

+ O.M.P.(MISC.)(COMM.) 608/2023

**NATIONAL SKILL DEVELOPMENT
CORPORATION**

..... Petitioner

Through: Ms. Mani Gupta, Mr. Pranav
Malhotra, Ms. Vishakha Saluja,
Advocates.

versus

**BEST FIRST STEP EDUCATION PRIVATE LIMITED
& ORS.**

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner has filed this petition under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], for extension of the mandate of the Arbitral Tribunal constituted to adjudicate disputes between the parties under a Loan Agreement dated 19.12.2013.

2. The petitioner was the lender under the agreement, respondent No. 1 was the principal borrower, respondent Nos. 2 to 5 were guarantors and respondent No. 6 is claimed to have given other undertakings in favour of the petitioner. The petitioner and respondent Nos. 1 to 6 were all parties to the arbitration proceedings.

3. The facts significant for disposal of this petition are as follows:

A. The arbitration was to be held under the aegis of the Indian Council

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of Arbitration [“ICA”]. The petitioner invoked arbitration in accordance with the ICA Rules by filing a request dated 21.03.2022 with the ICA.

- B. The ICA Rules require parties to complete pleadings before the appointment of an arbitrator. The petitioner filed its statement of claim on 13.06.2022. Respondent Nos. 1 to 5 filed their counter statement on 04.08.2022. No further pleadings were filed.
 - C. ICA appointed a learned Arbitrator on 27.01.2023.
 - D. Respondent No. 6 was proceeded *ex-parte* on 10.03.2023.
 - E. In an order dated 04.04.2023, the learned Arbitrator has recorded that counsel who had entered appearance for respondent Nos. 1 to 5 sought to withdraw their *vakalatnama*. They were permitted to do so. No other counsel appeared on behalf of respondent Nos. 1 to 5 since then.
 - F. The final hearing in the arbitration proceedings took place on 14.07.2023.
 - G. Proceeding on the basis that the mandate of the learned Arbitrator would terminate one year after the completion of the pleadings (which were completed on 04.08.2022), the petitioner filed this petition under Section 29A of the Act on 16.11.2023.
 - H. Notice in this petition was issued to the respondents by order dated 24.11.2023.
 - I. The learned Arbitrator published his award on 11.12.2023, which was received by the petitioner on 20.12.2023.
4. In the present petition, learned counsel for the petitioner has filed an affidavit of service dated 28.02.2024. It is stated therein that



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respondent No. 1 – Company has been served by Speed Post at its registered address as recorded in the Master Data available on the website of the Ministry of Corporate Affairs [“MCA”], Government of India, and at the corporate address appearing on its LinkedIn profile. Service by Speed Post at both the addresses has been unsuccessful, as the addressee has been found to have left the address. In view of the fact that an attempt has been made to serve the respondent No. 1 – Company by Speed Post at the registered address available on the MCA database, service as against respondent No. 1 is complete in terms of Section 12 and 20 of the Companies Act, 2013.

5. Respondent Nos. 2 and 3 are directors of respondent No. 1. They have been served by e-mail at the e-mail addresses which were given by them at the time of the contract.

6. Although attempts to serve respondent Nos. 4, 5 and 6 in this petition have been unsuccessful, it is clear from the factual narration above that they were also not appearing before the learned Arbitrator. Respondent No. 6 has already been proceeded as *ex-parte* before the learned Arbitrator. An attempt to serve at the addresses mentioned in the agreement has already been made as far as respondent Nos. 4 and 5 are concerned. As the only relief sought is for extension of the mandate of the arbitration, I am of the view that it is not necessary to await the appearance of parties who have not entered appearance in the arbitration proceedings.

7. The first question which arises for determination in this petition is whether the mandate of the Tribunal can be extended, even after the award has been made.



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8. Ms. Mani Gupta, learned counsel for the petitioner, draws my attention of two judgments of Coordinate Benches of this Court, which have culminated in different results on this point. The first is a decision dated 28.06.2023 in *Harkirat Singh Sodhi v. Oram Foods (P) Ltd.*¹ In the said judgment, as in the present case, the award was rendered during the pendency of the petition under Section 29A of the Act, and the mandate was extended until the date of the award.

9. Another Coordinate Bench, by a judgment dated 01.12.2023 in *Powergrid Corpn. of India Ltd. v. SPML Infra Ltd.*,² framed the question before the Court thus:

“18. An interesting question has been raised in this petition: whether an award can be validated, if it has been made after the expiry of mandate of the learned Tribunal and no application for extension has been made prior to its pronouncement?”

The question has been reiterated in the same terms in paragraph 28. The Court noted the contention on behalf of the respondent that the petition under Section 29A of the Act was provoked by a petition filed by the respondent under Section 34 of the Act, *inter alia* on the ground that the award was pronounced beyond the mandate of the learned arbitrator. The Court came to the conclusion that such a petition is not maintainable.

10. In the present case, the petition was filed prior to the award, although after the mandate of the learned Arbitrator had already expired. The factual petition is thus closer to the facts of the case in *Harkirat Singh Sodhi*.³

11. In my view, the two judgments can be reconciled. Where a petition

¹ 2023 SCC OnLine Del 3674.

² 2023 SCC OnLine Del 8324.

³ *Supra*, note 1.



is filed prior to the award having been delivered, and the award is delivered during the pendency of the petition, the petition would be maintainable. However, a petition filed after the award is delivered and proceedings for setting aside have been instituted, is not maintainable. This distinction is justifiable on principle also - a party cannot choose whether or not to seek extension of the mandate after becoming aware of its fate in the arbitration proceedings, and facing a challenge to the award on this ground.

12. The only distinction, which is also correctly pointed out by Ms. Gupta, between *Harkirat Singh Sodhi*⁴ and the present case is that the petition in the present case was filed after the expiry of the mandate of the learned Arbitrator, whereas in *Harkirat Singh Sodhi* it was filed while the mandate was still valid. This Court has held in *ATC Telecom Infrastructure (P) Ltd. v. BSNL*⁵ that a petition under Section 29A of the Act can be filed even after the mandate has expired. This distinction, therefore, need not detain us.

13. For the aforesaid reasons, I am of the view that the petition is liable to be allowed. The mandate of the learned Arbitrator is extended until the date of the award i.e., 11.12.2023.

14. The petition is disposed of in these terms.

PRATEEK JALAN, J

FEBRUARY 29, 2024

“Bhupi”/

⁴ *Supra*, note 1.

⁵ 2023 SCC OnLine Del 7135.