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

+ **O.M.P.(MISC.)(COMM.) 733/2024**

EASTERN SOFTWARE SYSTEMS PVT LTDPetitioner

Through: **Mr. Chandra Shekhar, Adv.**

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

.....Respondent

Through: **Mr. Arpit Srivastava, Adv.**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

18.09.2024

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I.A. 39661/2024-EX.

1. Exemption is granted subject to all just exceptions.
2. The petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

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4. This is a petition filed under Section 29A(4) and (5) of the Arbitration and Conciliation Act, 1996 (“Act of 1996”) seeking extension of mandate of the Arbitral Tribunal by a period of 6 months for concluding the arbitral proceedings and passing the final award.
5. It is stated that the cross examination of the respondent witnesses is going on and hence the delay.
6. Mr. Srivastava, learned counsel appears on advance notice and has no objection to the petition being allowed.
7. On perusing the record, this is the second extension of the mandate of



the Arbitral Tribunal. *Vide* Order dated 18.12.2023, this Court extended the mandate of the Arbitral Tribunal by a period till 30.06.2024.

8. For the aforesaid reasons, I am satisfied that a sufficient cause has been shown and hence, the mandate of the Arbitral Tribunal is extended by a period of 6 months from today.

9. The period from 30.06.2024 till today stands regularised.

10. Learned counsels for both the parties have objected to the secretarial expenses charged by the learned Arbitrator and prays for the secretarial expenses to be reduced. They further state that the arbitration proceedings are held at the residence of the learned Arbitrator and the fee payable to the learned Arbitrator as per the Fourth Schedule of the Act of 1996 has already been paid.

11. In addition to the fee already paid, both the parties are paying the sum of Rs. 10,000/- per hearing (to be shared equally) as secretarial charges to the learned Arbitrator and till today, have paid approximately Rs. 4 lakhs towards secretarial expenses.

12. The Hon'ble Supreme Court in **ONGC Ltd. v. Afcons Gunanusa JV, (2024) 4 SCC 481** has observed as under:-

“G. Conclusion

G.1. Findings

187. We answer the issues raised in this batch of cases in the following terms:

187.1. Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem



suam decisions i.e. the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration. However, the Arbitral Tribunal has the discretion to apportion the costs (including arbitrators' fee and expenses) between the parties in terms of Section 31(8) and Section 31-A of the Arbitration Act and also demand a deposit (advance on costs) in accordance with Section 38 of the Arbitration Act. If while fixing costs or deposits, the Arbitral Tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators. The Arbitral Tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under Section 39(1). The party can approach the Court to review the fees demanded by the arbitrators if it believes the fees are unreasonable under Section 39(2);”

13. A perusal of the said judgment shows that the learned Arbitrator cannot issue binding enforceable directions to determine and enforce their own fees.

14. In cases where the arbitration is not ad hoc arbitration i.e. Institutional Arbitration, then the institutional rules apply on the expenses of the arbitrators, Courts and witnesses. But in ad hoc arbitration, generally, it is the fee and expenses left for the Arbitrator/Arbitral Tribunal to decide, not unilaterally, but with the consent of the parties. No straight jacket formula can be applied to calculate the expenses of the arbitrators, Courts and witnesses in ad hoc arbitration as it depends on each case and more



particularly on the claims and counter claims of the parties.

15. The parties herein earlier with the agreement were making payment of Rs. 10,000/- as secretarial expenses, but have now jointly requested for a reduction of the same.

16. What weighs to me is that in the present case, the claim is about Rs. 66 lakhs approximately and there is no counter- claim of the respondent. Hence, as per the Serial No. 3 of the Fourth Schedule of the Act of 1996, the fees of the learned Arbitrator would be approximately Rs. 2.94 lakhs which already stands paid.

17. However, the secretarial expenses of Rs. 4 lakhs are substantially more than the fees of the learned Arbitrator as per the Fourth Schedule of the Act of 1996. The same according to me is highly unreasonable. The parties have paid the learned Arbitrator secretarial expenses which run more than the fees as per the Fourth Schedule of the Act of 1996. Hence, keeping in mind that this is the second extension of the mandate of the Arbitral Tribunal and as per the request of the parties, it is directed that the learned Sole Arbitrator shall not charge secretarial expenses more than Rs. 3,000/- per hearing which shall be shared equally by both the parties.

18. It is clarified that the observations made above with respect to the secretarial expenses shall not be treated as precedent.

19. With these directions, the petition is disposed of.

20. *Order Dasti.*

JASMEET SINGH, J

SEPTEMBER 18, 2024/NG