



\$~38 to 40

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

+ O.M.P.(MISC.)(COMM.) 744/2024

ALOMPCM INFRASTRUCTURAL AND LOGISTICS PVT. LTD

.....Petitioner

Through: Ms. Ruchi Jain, Mr. Rahul Dubey,
Ms. Aparna Shukla, Advs.

versus

FOOD CORPORATION OF INDIA

.....Respondent

Through: Mr. Manoj, Adv. Standing Counsel
for FCI with Ms. Aparna Sinha, Adv.

39

+ O.M.P.(MISC.)(COMM.) 745/2024

PSA PROTECH AND INFRALOGISTICS PVT. LTD.....Petitioner

Through: Ms. Ruchi Jain, Mr. Rahul Dubey,
Ms. Aparna Shukla, Advs.

versus

FOOD CORPORATION OF INDIA

.....Respondent

Through: Mr. Manoj, Adv. Standing Counsel
for FCI with Ms. Aparna Sinha, Adv.

40

+ O.M.P.(MISC.)(COMM.) 746/2024

MACHEDA LOGISTICS INDIA PVT. LTDPetitioner

Through: Ms. Ruchi Jain, Mr. Rahul Dubey,
Ms. Aparna Shukla, Advs.

versus

FOOD CORPORATION OF INDIA

.....Respondent

Through: Mr. Manoj, Adv. Standing Counsel
for FCI with Ms. Aparna Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH



ORDER

06.11.2024

%

1. These are the petitions filed under section 29 A (4) and (5) of the Arbitration and Conciliation Act, 1996 seeking extension of mandate of the Arbitral Tribunal by a period of 2 months to make and publish the Arbitral Award
2. It is stated by Ms. Jain, learned counsel for the petitioner that in the present case, the learned Arbitral Tribunal has already heard the arguments and had listed the matter for pronouncement of the Arbitral Award. It is only subsequently the mandate of the Arbitral Tribunal has expired. Hence the present petitions.
3. Mr. Manoj, learned Standing Counsel for the respondent has filed a reply wherein the objection has been taken that the delay should not be condoned and the whole purpose of the Arbitration and Conciliation Act, 1996 is expeditious disposal of cases. After 1 year, a period of 6 months was granted to the learned Arbitral Tribunal by mutual consent of parties and despite the same, the Award has not been made. Hence there is implied prohibition for further extension of time.
4. He further states that in the present case, the mandate of the learned Arbitral Tribunal expired on 21.08.2024 and the present petitions seeking extension of mandate of the Arbitral Tribunal have been filed on 18.09.2024 i.e. when the Arbitral Tribunal had already become *functuous officio*. Hence, the present petitions cannot be entertained.
5. Lastly, he states that there is no sufficient cause shown for the delay.
6. I am unable to agree.
7. The issue of filing petitions seeking extension of mandate of the



Arbitral Tribunal after the expiry of the mandate of the Arbitral Tribunal is no longer res integra. Recently, the Hon'ble Supreme Court in ***Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd., 2024 SCC OnLine SC 2494*** has observed as under:-

“14. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29A(3). Narrow interpretation presents an additional challenge by relegating a faultless party to a fresh reference or appointment of an arbitrator under the A & C Act, thereby impeding arbitration rather than facilitating it. The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation. A narrow interpretation will be counterproductive. The intention is appropriately captured in the following observations made in the 176th Report of the Law Commission of India :

“2.21.1 (...) But the omission of the provision for extension of time and therefore the absence of any time limit has given rise to another problem, namely, that awards are getting delayed before the arbitral tribunal even under the 1996 Act. One view is that this is on account of the absence of a provision as to time limit for passing an award.

xxxxxx

2.21.3 (...) The time limit can be more realistic subject to extension only by the court. Delays ranging from five years to even fourteen years in a single arbitration have come to the Commission's notice. The Supreme Court of India has also referred to these delays of the arbitral tribunal. The point here is that these delays are occurring even in cases where there is no court intervention during the arbitral process. The removal of the time limit is



having its own adverse consequences. There can be a provision for early disposal of the applications for extension, if that is one of the reasons for omitting a provision prescribing a time limit, say one month. Parties can be permitted to extend time by one year. Pending the application for extension, we propose to allow the arbitration proceedings to continue.(...)

xxxxxx

2.21.4 It is, therefore, proposed to implement the recommendation made in the 76th Report of the Law Commission with the modification that an award must be passed at least within one year of the arbitrators entering on the reference. The initial period will be one year. Thereafter, parties can, by consent, extend the period upto a maximum of another one year. Beyond the one year plus the period agreed to by mutual consent, the court will have to grant extension. Applications for extension are to be disposed of within one month. While granting extension, the court may impose costs and also indicate the future procedure to be followed by the tribunal. There will, therefore, be a further proviso, that further extension beyond the period stated above should be granted by the Court. We are not inclined to suggest a cap on the power of extension as recommended by the Law Commission earlier. There may be cases where the court feels that more than 24 months is necessary. It can be left to the court to fix an upper limit. It must be provided that beyond 24 months, neither the parties by consent, nor the arbitral tribunal could extend the period. The court's order will be necessary in this regard. But in order to see that delay in disposal of extension applications does not hamper arbitration, we propose to allow arbitration to continue pending disposal of the application.

2.21.5 One other important aspect here is that if there is a delay beyond the initial one year and the period agreed



to by the parties (with an upper of another one year) and also any period of extension granted by the Court, there is no point in terminating the arbitration proceedings. We propose it as they should be continued till award is passed. Such a termination may indeed result in waste of time and money for the parties after lot of evidence is led. In fact, if the proceedings were to terminate and the claimant is to file a separate suit, it will even become necessary to exclude the period spent in arbitration proceedings, if he was not at fault, by amending sec. 43(5) to cover such a situation. But the Commission is of the view that there is a better solution to the problem.

The Commission, therefore, proposes to see that an arbitral award is ultimately passed even if the above said delays have taken place. In order that there is no further delay, the Commission proposes that after the period of initial one year and the further period agreed to by the parties (subject to a maximum of one year) is over, the arbitration proceedings will nearly stand suspended and will get revived as soon as any party to the proceedings files an application in the Court for extension of time. In case none of the parties files an application, even then the arbitral tribunal may seek an extension from the Court. From the moment the application is filed, the arbitration proceedings can be continued. When the Court takes up the application for extension, it shall grant extension subject to any order as to costs and it shall fix up the time schedule for the future procedure before the arbitral tribunal. It will initially pass an order granting extension of time and fixing the time frame before the arbitral tribunal and will continue to pass further orders till time the award is passed. This procedure will ensure that ultimately an award is passed.”

15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note



that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced. The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.

.....

19. In view of the above discussion, we hold that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. The court while adjudicating such extension applications will be guided by the principle of sufficient cause and our observations in paragraph 15 of the judgment.”

8. The Hon’ble Supreme Court has categorically observed that the application under section 29A of the Arbitration and Conciliation Act, 1996 can be filed even after the expiry of the period of 12 months or extended 6 months. Hence the present petitions are maintainable and can be entertained.

9. As regards the implied prohibition is concerned, again a perusal of paras 14 and 15 quoted above shows that the Hon’ble Supreme Court has opined that the Court while granting extension should not act mechanically but use its judicial discretion to see that there is no abuse of the judicial process and the party is not unnecessarily delaying the proceedings. In the present case, as already observed, the parties have led evidence, all the witnesses are examined and cross-examined, final arguments have been addressed and the Arbitral Award is now ready for pronouncement.



10. In these circumstances, I am of the view that there is no abuse of judicial process of law. For the said reasons, the petitions are allowed and the mandate of the Arbitral Tribunal is extended by a period of 2 months from today to make and publish the Arbitral Award.

11. The period from 21.08.2024 till today stands regularized.

12. The petitions are disposed of.

JASMEET SINGH, J

NOVEMBER 6, 2024/DM

Click here to check corrigendum, if any