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

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Date of Decision: 10.12.2024+ **O.M.P.(MISC.)(COMM.) 765/2024 &I.A. 40813/2024****RAJESH GARG**

.....Petitioner

Through: Mr. Suresh Tripathy and Ms. Kiran
Yadav, Advocates.

versus

SOMNATH AGGARWAL & ANR.

.....Respondents

Through: Mr. Dveep Ahuja, Adv. (through VC)

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J (ORAL)**

1. The present petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks extension of time for completion of arbitral proceedings and making of the arbitral award.
2. The learned arbitrator was appointed by this Court *vide* order dated 26.04.2023 in ARB. P. No. 470/2023. The first sitting before the learned arbitrator took place on 13.05.2023 when the learned arbitrator entered upon the reference. Subsequent thereto, several sittings took place within a span of 12 months thereafter. However, after expiry of the period of 12 months, the respondent herein refused to agree for further extension of time for completion of arbitral proceedings as contemplated under Section 29A(3) of the A&C Act.
3. It is seen that the order dated 21.09.2024 passed by the learned arbitrator sets out the background of the proceedings before the learned arbitrator and the context in which the present petition has been filed. The



said order reads as under:-

“Mr. Suresh Tripathi, Advocate along with Mr. Rajesh Garg (Claimant) appeared for the Claimant and Mr. Dweep Ahuja, Advocate along with Mr. Somanath Aggarwal for respondents are present.

Heard Mr. Suresh Tripathi learned Counsel for the Claimant and Mr. Dweep Ahuja learned Counsel for the Respondents. At the outset, Mr. Dweep Ahuja the learned counsel for the Respondents informed the Arbitrator that the period of 12 months from the date the Arbitrator had entered the reference has already expired. He referred to Section 29 (A) (3) of the Arbitration and Conciliation Act, 1996 wherein it is provided that "The parties may, by consent, extend the period specified in sub-section (1) for making award for further period not exceeding six months". Consequently, he made a submission that his clients, the Respondents herein, have refused to give their consent to extend the period as specified in sub-section (1) for making award for a further period not exceeding 6 months. Mr. Suresh Tripathi, the learned counsel for the Claimant has opposed the prayer of the learned counsel for the Respondents qua the giving of consent.

The first sitting of the Arbitrator took place on 13.05.2023 when the Arbitrator entered upon the reference. Subsequent to the said date, several sittings of the Arbitrator have taken place within a span of 12 months and an attempt was also made to request the parties to reach an amicable settlement between them. Nevertheless, despite couple of chances being granted to them for reaching an amicable settlement, the same could not be arrived at between the parties.

A perusal of the entire order sheet passed during the arbitral proceedings would clearly show that apart from moving an application U/s. 17 for interim relief, several other applications were moved from time to time on one ground or the other. The Arbitrator disposed of each of the said applications with a detailed order after hearing the learned counsel for the parties and perusing the entire record. However, despite the best efforts of the Arbitrator, the matter could not be concluded within the specified period of 12 months as moving of such applications one after another did consume precious time and delayed the proceedings. At this stage, when such objection has been raised by the learned counsel for the Respondents, the Evidence by way of Affidavit has already been filed by the Claimant on 05.09.2024. However, the counsel for the Respondents instead of filing the Evidence by way of Affidavit of the Respondents has filed yet another Miscellaneous Application seeking cross-examination of the



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Claimant and framing of further issues despite the fact that the Arbitrator vide order dated 24.08.2024 had specifically denied the "opportunity of cross-examination at that stage". This application contains similar averments which have already been decided in the earlier applications and has been filed on 14.09.2024, the day by which the Respondents were required to file their Evidence by way of Affidavit. The said application has been filed without an accompanying affidavit of the Respondent.

The counsel for the Claimant has filed his reply on 16.09.2024 thereby strongly opposing/rebutting the contentions raised by the Respondents in the aforesaid application. The Claimant has in the said application made a specific contention that the said application has been filed only to delay the proceedings and has prayed to impose exemplary costs on the Respondents. Be that as it may, in the light of the fact that the counsel for the Respondents has specifically made a statement that his clients i.e., the Respondents have decided not to give their consent for extension of a period of 6 months in the present proceedings and the aforesaid statement of the counsel for the Respondent has been verified by Mr. Somnath Aggarwal, one of the Respondents present in the proceedings today.

In the light of what has been stated hereinabove, this Arbitrator deems it appropriate to adjourn the proceedings sine die, at this stage, unless and until either of the parties moves before the Hon'ble High Court U/s. 29 (A) (4) & (5) for extension and the Arbitrator would be bound by whatever directions the Hon'ble High Court passes if such application is moved. However, with great dismay and sadness, I may close the proceedings at this stage by simply observing that a perusal of the orders passed in the entire Arbitral Proceedings in the last 12 months would make it absolutely clear that no stone has been left unturned to delay the proceedings on one pretext or the other even though the entire dispute before the Arbitrator was with regard to the share between the partners of the firm and the entire issue is based on documentary evidence which already formed a part of the record.

The present dispute could have been decided expeditiously if such delaying tactics were not adopted. I am pained to state here that despite my best efforts, the said proceedings could not be completed within the statutory period of 12 months for the reason mentioned hereinabove.

I would also like to add that the fee of the Arbitrator as per the schedule of the statute till this stage has been fully paid by the Claimant and the Respondent Mr. Somnath Agarwal undertakes to



make the payment within a couple of days from today and accordingly requested to do the same within the specified period. With the aforesaid observations, the proceedings at this stage are put to halt as per the mandate contained in Section 29 (A) of the Arbitration and Conciliation Act, 1996 and to await further orders from the Hon'ble High Court in case either of the parties decided to approach the Hon'ble High Court for the said purpose."

4. Learned counsel for the respondent opposes the present petition on the ground that there is a genuine apprehension of bias against the arbitrator. It is further submitted that the petitioner has filed a petition under Section 14 r/w Section 15 of the A&C Act seeking that a substitute arbitrator be appointed to adjudicate the disputes between the parties.

5. In the present proceedings, the Court is only concerned with the issue as to whether there has been any undue delay on the part of the arbitrator in conducting the proceedings. In this regard reference may be made to the judgment of this Court in **Mr. Anay Kumar Gupta Vs. Mr. Jagmeet Singh Bhatia**, 2023:DHC:4599, wherein it has been observed as under:

"17. The law is also well settled that the Court while considering an application under Section 29A of the Act, is only concerned with the issue as to whether the Arbitrator has acted with expedition in the matter; issues relating to the conduct of the Arbitration and/or arbitral fees are not relevant for the purpose of Section 29A."

6. The order dated 21.09.2024 clearly brings out that the learned sole arbitrator has not been remiss in this regard. As such, there is no impediment to grant an appropriate extension of time for completion of arbitral proceedings and making of arbitral award.

7. As regards the apprehension that the learned arbitrator is biased or that the conduct of the proceedings is not in consonance with law, it is open to the respondent to take recourse under the appropriate provisions of the A&C Act. The petitioner is stated to have already availed the remedy to



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approach this Court by filing a petition under Section 14 r/w Section 15 of the A&C Act. The same is, however, yet to be listed. Needless to say, the petition shall be considered on its own merits. However, the same does not preclude this Court from granting an appropriate extension of time under Section 29A of the A&C Act.

8. Accordingly, the time period for completion of arbitral proceedings and making of arbitral award is extended till 31.10.2025.

9. The present petition is disposed of in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

DECEMBER 10, 2024/at