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

Date of decision: 25.09.2025

+ **O.M.P.(MISC.)(COMM.) 296/2025 & I.A. 12941/2025**

NAYAK INFRASTRUCTURE PRIVATE LIMITED IN
LIQUIDATION

.....Petitioner

Through: Mr Vijay Deora, Adv, Mr Shailesh
Sinha Adv

versus

IRCON INTERNATIONAL LIMITED

.....Respondent

Through: Mr Karmanya Dev Sharma, Mr
Sidhant Goel, Mr Mohit Goel, Ms Aishna Jain, Mr
Shashwat Mukharjee, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 29A(5) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking extension of the mandate of the Arbitral Tribunal by a period of 6 months for making and publishing the final Award.
2. The facts are that Letter of Award dated 08.10.2013 was issued by the respondent in favour of the petitioner for construction of civil work Blanketing, major and minor bridges and other ancillary works from International Boundary of Nepal side.
3. Since, disputes arose between the parties during implementation of



work, the petitioner *vide* Arbitration Petition No. 521 of 2018 approached this Court for appointment of a panel of Arbitral Tribunal, which was subsequently appointed.

4. The Arbitral Tribunal entered into reference and notice for preliminary hearing was issued on 19.11.2018. The first hearing was held on 06.12.2018 but were then delayed due to Covid-19 pandemic.
5. The parties filed their respective evidence by way of affidavit and on 19.07.2021, the Arbitral Tribunal fixed the matter for petitioner's witnesses on 04.10.2021.
6. Meanwhile, the petitioner was admitted to Corporate Insolvency Resolution Process ("**CIRP**") and Hon'ble NCLT, Guwahati *vide* order 26.08.2021, admitted an application filed by the State Bank of India against the petitioner under section 7 of Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Hence, the moratorium under Section 14 of IBC was placed on the petitioner. An Insolvency Resolution Professional was also appointed to take control of the management of the petitioner.
7. *Vide* order dated 07.07.2022, the Arbitral Tribunal terminated the arbitration proceedings as no application for extension was filed and the mandate was not extended. Subsequently, the petitioner filed an application under Section 29A(5) of the 1996 Act and the Court *vide* order dated 22.09.2022 allowed the said application and extended the mandate of the Arbitration Tribunal by a period of 8 months from 22.09.2022 till 21.05.2023. Consequently, on 08.10.2022, the learned Arbitral Tribunal revived the proceedings.
8. Since the petitioner was under CIRP, the petitioner was unable to pay its share of the fees to the Arbitral Tribunal. On 08.10.2022, the



Arbitral Tribunal passed the following order:-

“Order
(Dated 8th October, 2022)

Vide order dated 7th July, 2022 passed by this Arbitral Tribunal, the present Arbitration Proceedings were terminated in view of Section 29A of the Act.

2. Now Id Counsel for the Claimant has sent through an email the application in question praying to revive and continue the above arbitration proceedings in view of the order dated 22nd September, 2022 passed by Hon'ble Mr Justice Anup Jairam Bhambhani, vide which mandate of this Arbitral Tribunal has been extended by a further period of 08 months.

3. Id Counsel for the Claimant has also enclosed the copy of the above order of the High Court.

4. After going through the record, it is accordingly ordered that the present Arbitration Proceedings stand revived.

5. However, before fixing the next date of hearing it is important to observe that the Claimant is not paying its share of Arbitrators fee, being the third installment as ordered as early as on 4th October, 2021 (being Twelfth Hearing). It would be pertinent to point out that the Respondent has already paid its share of Arbitrators fee before 12th May, 2022.

6. Thereafter on every date of hearing, till 7th July 2022 (being Nineteenth Hearing) the Claimant had been directed to pay its share towards Arbitrators fee but Claimant failed to comply with those directions.

7. Under these circumstances, it is ordered that the present



Arbitration Proceedings shall be listed for settlement only if the Claimant pay its share of Arbitrators fee within Two weeks from today, failing which the law will take its course as per Sections 31A, 32, 38 and 39 of the Act. ”

9. In the meanwhile, the petitioner was admitted into liquidation and is now managed by the liquidator. Consequently, on necessary permissions and approvals, the liquidator was in a position to pay the Arbitral Tribunal's fee.
10. The petitioner moved an application before the Arbitral Tribunal for revival of the proceedings and payment of the fees. On the said application, the Arbitral Tribunal passed an order dated 19.03.2025, which reads as under:-

“ORDER
(Dated: 19.03.2025)

1. In the present case, an application dt. 04.03.2025 has been filed on behalf of Claimant seeking permission to comply the order dt. 08.10.2022 passed by this Arbitral Tribunal and for continuation of Arbitral Proceedings.
2. As per record, the Arbitral Proceedings were earlier terminated by this Arbitral Tribunal for non- payment of Arbitrator's fees to the three Bench Members of this Arbitral Tribunal.
3. Now in the present application it is stated, that the liquidator after taking over the management of the Claimant has initiated the Liquidation Proceedings. Moreover, pursuant to this Arbitral Tribunal's order dated 08.10.2022, the Liquidator has placed the proposal to pay the balance Arbitral fee of Rs. 4,25,416/- for each of the Arbitrator's before the Stakeholders Consultation Committee (the “SCC”). It is also



submitted, that the SCC has now approved the proposal to pay the balance fee of Rs. 4,25,416/- for each of the Arbitrators of this Arbitral Tribunal.

4. *It has been further stated in this application, that the Liquidator on behalf of the Claimant will also file an application under Section 29A (5) of the Arbitration and Conciliation Act, 1996 (for short as 'Act') before the Hon'ble High Court seeking revival of the Arbitration Proceedings and extension of the mandate of this Arbitral Tribunal to conclude the Arbitration Proceedings and pass the Arbitral Award.*

5. *Hence, it is prayed that the present application be allowed and hearing for compliance of order dt. 08.10.2022 by the Claimant and for setting out the future course of action before this Arbitral Tribunal.*

6. *As per averments made in this application, admittedly the liquidator on behalf of the Claimant has to file an application under Section 29A (5) of the Act before the Hon'ble High Court seeking revival of the Arbitration Proceedings and extension of the mandate of this Arbitral Tribunal to conclude the Arbitration Proceedings and pass the Arbitral Award.*

7. *Since application under Section 29A (5) of the Act is yet to be filed, no order can be passed by this Arbitral Tribunal at this stage. Let proper application be filed on behalf of the Claimant in this regard and only thereafter appropriate order shall be passed by this Arbitral Tribunal.*

Copy of this order be sent by email to other Ld. Co-Arbitrator's and all concerned."

11. Hence, the present petition seeking extension of the mandate of the



Arbitral Tribunal.

12. The learned counsel for the petitioner states that, no Order was ever passed by the Arbitral Tribunal for the termination of the arbitration proceedings and the Respondent has not filed any application for termination. Therefore, the arbitration proceedings were never terminated. Meanwhile, as per order dated 20.09.2022, the mandate of the Arbitral Tribunal expired on 22.05.2023. Therefore, only the mandate of Arbitral Tribunal has expired, and the Arbitration proceedings are thus not terminated for the non-payment of the arbitrator's fees.
13. Mr. Sharma, learned counsel for the respondent opposes the application and states that a perusal of the orders dated 08.10.2022 and 19.03.2025 shows that the proceedings had been terminated and thereafter the mandate.
14. He states once the proceedings have been terminated under Section 32 and 38 of the 1996 Act , the provisions of Section 29A of the 1996 Act will not apply. The same are applicable only in cases where the mandate of the learned Arbitral Tribunal expires by efflux of time. He places reliance on ***Rohan Builders (India) Private Limited v. Burger Paints India Private Limited 2024 SCC OnLine SC 2494 and M/s Chemical Sales Corporation & Ors. v. A&A Laxmi Sales and Services Private Limited, 2011 SCC OnLine Del 3847.***
15. It is further stated that the provisions of Section 29A, the learned Arbitral Tribunal has to be seized of the proceedings and it is not so in the present case.
16. I have heard learned counsels for the parties.



17. A perusal of the facts narrated above, the Arbitral Tribunal *vide* order dated 08.10.2022, in paragraph 7 ordered that in case the claimant does not pay the fee, the law will take its course under Section 31A, 32, 38 and 39 of the 1996 Act.
18. Admittedly, there is no further order passed by the learned Arbitral Tribunal and it is only on 19.03.2025 that the learned Arbitral Tribunal records that the proceedings had been terminated.
19. The respondent has placed reliance on ***Chemical sales corporation (supra)***, particularly on para 11 which is extracted below:-

“11. The aforesaid provision specified the circumstances under which arbitral proceedings shall be terminated. It provides that arbitral proceedings shall stand terminated on Arbitral Tribunal making an award. Besides that, arbitral proceedings can also be terminated in case (a) claimant withdraws his claim (b) parties agree on the termination of the proceedings. For example, if parties arrive at a settlement and agree for termination of proceedings, in such an eventuality also, arbitral proceedings shall stand terminated (c) if Arbitral Tribunal finds that continuation of the proceedings have become unnecessary or impossible for any other reason. In other words, if the arbitral tribunal finds, for any reason which includes non-cooperation of the parties, making the continuation of the proceedings impossible, then it can make an order for termination of the arbitral proceedings. In case of termination of the proceedings, the mandate of Arbitral Tribunal shall also stand terminated as envisaged under Sub-



Section 3 of Section 32 of the Act except in cases where Section 33 and Section 34(4) of the Act are attracted. Arbitral Tribunal has power to terminate the arbitral proceedings under Section 25(a) upon default of the claimant to communicate his statement of claim; under Section 30(2) upon settlement of dispute by the parties and under Section 38(2) upon failure of the parties to pay the amount of deposit fixed by the Arbitral Tribunal. The termination of arbitral proceedings is different from termination of the mandate of arbitrator. The mandate of arbitrator, depending upon the facts and circumstances of a case, may come to an end but not the arbitral proceedings. For example, if the parties to the arbitration agreement had fixed a period of six months for completion of arbitral proceedings and making of an award by the Arbitral Tribunal and the Arbitral Tribunal fails to do so on or before expiry of six months, the mandate of Arbitral Tribunal shall come to an end but not the arbitration proceedings and in such an eventuality, if a substitute arbitrator is appointed than he shall have to continue with the arbitration proceedings from the stage the same had been left by the earlier arbitrator. However, in case arbitration proceedings are terminated within the meaning of Section 32 of the Act resulting in termination of mandate of arbitrator, the same cannot continue merely by appointing another arbitrator. In such a scenario, first of all, the arbitration proceedings have to be revived after setting aside the order of



Arbitral Tribunal terminating the arbitral proceedings. ”

20. In the present case, the same is inapplicable since the Respondent has not filed any application for termination. The arbitration proceedings were never terminated. For termination the Arbitral Tribunal has to make explicit findings. As per the order of 19.03.2025 the tribunal does not make findings with respect to termination. The Tribunal observed that the fee has not been paid, but does not make any observation regarding the termination. Moreover, the Tribunal has further observed that the Liquidator has taken over the management of the petitioner and is in a position to deposit the fee. It was also observed that he shall file application under Section 29A of the 1996 Act of the Act on behalf of the petitioner. These findings do not show any observation from the Tribunal's side on termination of proceedings.
21. Therefore, it cannot be said that the Tribunal has exercised its power to terminate the proceedings on account of non-payment of fees under section 38(2) of the 1996 Act.
22. Further, paragraph 11 of **Rohan Builders (supra)**, reads as under:

“11. The word “terminate” in Section 29A(4) makes the arbitral tribunal functus officio, but not in absolute terms. The true purport of the word “terminate” must be understood in light of the syntax of the provision. The absence of a full stop after the word “terminate” is noteworthy. The word “terminate” is followed by the connecting word “unless”, which qualifies the first part with the subsequent limb of the section, i.e. “unless the court has, either prior to or after the expiry of the period so specified, extended the period.” The



expression “prior to or after the expiry of the period so specified” has to be understood with reference to the power of the court to grant an extension of time.”

23. The Arbitral Tribunal did not opine that the proceedings are terminated. It was just a case of efflux of time of the Arbitral Tribunal as the application of extension of mandate was not made. As per *Rohan Builders(supra)* non-filing of extension application cannot be treated as termination *stricto sensu*.
24. Moreover, Hon’ble Supreme Court in ***Dani Wooltex Corpn. v. Sheil Properties (P) Ltd., (2024) 7 SCC 1*** observes that unless the Arbitral Tribunal records reasons that proceedings have become unnecessary or impossible, the power under clause (c) of sub-section (2) of Section 32 cannot be exercised. Relevant para reads as under:-

“25. . . .

25.1. The power under clause (c) of sub-section (2) of Section 32 of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible. Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under clause (c) of sub-section (2) of Section 32 cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act.”

25. I am of the view that if the proceedings have been terminated under Section 32 and 38 of the 1996 Act, there has to be a specific order by the learned Arbitral Tribunal. The order under Section 32 and 38 of the 1996 Act affects valuable rights of the parties and an order cannot be



read as an order by implication.

26. In the present case, there is no order under Section 32 and 38 of the 1996 Act and as per the respondent, the order under Section 32 and 38 of the 1996 Act is sought to be read by implication.
27. The parties have invested considerable time effort energy and resources in the arbitration proceedings and the proceedings have been going on since November, 2018. To terminate the proceedings at this stage would be against the contours of the Arbitration and Conciliation Act, 1996.
28. Therefore, since the Arbitration proceedings have not been terminated for the reasons stated above, the same can be extended or revived under section 29 (4) of the 1996 Act.
29. In this view of the matter, the petition is allowed and the mandate of the Arbitral Tribunal is extended upto 1 year from today to conclude the arbitration proceedings and make and publish the Award.
30. On payment of fee of the learned Arbitral Tribunal, the period till today stands regularized.
31. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 25, 2025 / (MS)

(Corrected and released on 03.10.2025)