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

+ **O.M.P.(MISC.)(COMM.) 421/2025**

KAILASH ASSOCIATES

.....Petitioner

Through: Mr. Sourav Roy, Mr. Pranav Bafna
and Mr. Anshu Deshpande, Advocates.

versus

JKG CONSTRUCTIONS PVT. LTD.

.....Respondent

Through: Mr. Sanjay Jain and Ms. Ankita
Kedia, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

11.08.2025

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1. This petition is filed on behalf of the Petitioner under Section 29A(4) and (5) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking extension of the mandate of the Arbitrator.
2. Disputes having arisen between the parties in respect of Service Agreement dated 28.03.2019, Petitioner filed a petition before this Court under Section 11(6) of 1996 Act for appointment of a Sole Arbitrator, being ARB. P. 167/2020, which was allowed on 01.09.2022 and Sole Arbitrator was appointed. It is stated in the petition that pleadings were completed on 12.09.2023 and 12 months period for passing the award expired on 12.09.2024. With the consent of the parties, learned Arbitrator extended the mandate by six months upto 12.03.2025.
3. It is stated that by order dated 05.11.2023, learned Arbitrator passed an interim award holding that the Counter Claims of the Respondent were time barred. An issue arose with respect to the fee of the Arbitrator and by



order dated 16.03.2024, the proceedings were suspended with liberty to the parties to come back, if they were willing to pay the fee. On 26.04.2024, Petitioner filed an application under Section 38 of 1996 Act to continue the proceedings *qua* the claims of the Petitioner. On 01.05.2024, the Arbitrator held that the Petitioner will be at liberty to approach this Court for seeking appointment of the substitute Arbitrator as the said Arbitrator was no longer interested to continue the proceedings.

4. Pursuant to the liberty granted, Petitioner filed a petition in this Court under Sections 14 and 15 of 1996 Act seeking substitution of the Sole Arbitrator in OMP(T)(COMM) 59/2024 and vide order dated 25.11.2024, Court allowed the petition and referred the matter to Delhi International Arbitration Centre ('DIAC') to appoint an Arbitrator to adjudicate the disputes. All rights and contentions of the parties in relation to claims/counter claims were kept open to be decided by the substitute Arbitrator on merits, in accordance with law.

5. It is stated in the petition that on 29.11.2024 Petitioner sent an e-mail to DIAC requesting for appointment of a substitute Arbitrator. On 02.12.2024, DIAC asked the Petitioner to file Statement of Claims, which it did on 05.12.2024 and on 06.12.2024, Respondent submitted its Statement of Defence along with Counter Claim. On 12.12.2024, DIAC shared the fee of the Arbitrator *albeit* without considering, according to the Petitioner, that Counter Claim had been rejected by the earlier Arbitrator as being time barred. Petitioner, therefore, addressed a detailed representation to DIAC on 15.01.2025 for recomputing the fee, which request was rejected on 11.02.2025. Petitioner made another representation to the Chairperson, DIAC, for reconsideration of the decision and finally on 02.04.2025, a



decision was taken to recompute Arbitrator's fee without taking into consideration Counter Claim and the revised fee was communicated to the Petitioner on 07.04.2025. It is in this backdrop that the present petition was filed for extension of the mandate of the Arbitrator.

6. Learned counsel for the Respondent contests the petition on the ground that appointment of the Arbitrator by this Court on 25.11.2024 is to be treated as fresh appointment and therefore no extension of the mandate is required. Alternatively, it is urged that the proceedings were put under suspension by the erstwhile Arbitrator and if the suspension period is excluded, no extension is required. In support of the plea, learned counsel places reliance on the judgment of the Supreme Court in ***Rohan Builders (India) Private Limited v. Berger Paints India Limited, 2024 SCC OnLine SC 2494***, more particularly, paragraph 10 thereof.

7. Indisputably, the mandate of the erstwhile Arbitrator expired on 12.03.2025. By order dated 25.11.2024, this Court appointed a substitute Arbitrator in a petition under Sections 14 and 15 of 1996 Act. The stand of Respondent is that the appointment of the second Arbitrator is to be treated as a fresh appointment inasmuch as the Court had left all rights and contentions of the parties in relation to claims/counter claims open, implying that the earlier order dated 05.11.2023, whereby the erstwhile Arbitrator had rejected the Counter Claim, no longer survives. Petitioner contends otherwise and submits that the order dated 25.11.2024 passed by the Court in a petition under Sections 14 and 15 of 1996 Act can only be construed as an order appointing a substitute Arbitrator and therefore the order rejecting the Counter Claim of the Respondent will continue to hold the field and since the mandate expired on 12.03.2025, the same be extended.



8. Having given a thoughtful consideration to the rival submissions, I am of the view that the mandate of the learned Arbitrator requires to be extended since vide order dated 25.11.2024, Court has appointed a substitute Arbitrator and this is evident from a plain reading of the order. Reliance on the judgment of the Supreme Court in ***Rohan Builders (supra)***, is misconceived in the facts of this case. The issue in the said case was whether an application for extension of time under Section 29A of 1996 Act can be filed after expiry of the period for making the arbitral award and it is in this context that the Supreme Court observed in paragraph 10 of the judgment that the word ‘terminate’ in Section 29A (4) cannot be read in isolation and has to be read in conjunction with other words in the provision as also that looking at the legislative intent, the word ‘terminate’ intends to affirm principle of party autonomy and resultantly, if neither party moves an application for extension of time for making the award, arbitration proceedings are terminated. 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” and therefore the expression ‘prior to or after the expiry of the period so specified’, has to be understood with reference to power of the Court to grant extension of time. The word ‘terminate’ does not reflect termination as if proceedings have come to a legal and final end and cannot continue even on filing of an application for extension of time and thus termination under Section 29A(4) is not set in stone or absolutistic in character. It was also observed that use of word ‘suspension’ would have led to infeasible ramifications.

9. Accordingly, this petition is allowed extending the mandate of the



Arbitrator by nine months from today and period between 13.03.2025 to 10.08.2025 is regularized. It is left open to the Arbitrator to take a decision on the issue of the Counter Claim of the Respondent in light of order dated 05.11.2023 passed by the erstwhile Arbitrator and order dated 25.11.2024 passed by this Court.

10. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 11, 2025/shivam