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

+ **O.M.P.(MISC.)(COMM.) 1004/2024**

ARCELORMITTAL NIPPON STEEL INDIA LTD.....Petitioner

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Ashim Sood, Ms. Ananya Ghosh, Ms.
Mrinalini Mishra and Ms. Doel Bose, Advocates.

versus

MIDEAST INTEGRATED STEEL LTDRespondent

Through: Mr. Amit Gupta and Ms. Muskan
Nagpal, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **27.05.2025**

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') for extension of time for completion of arbitral proceedings and pronouncement of the award.

2. Shorn of unnecessary details, facts leading to filing of the present petition are that Petitioner and Respondent entered into an Offtake Agreement dated 02.09.2009 amended by addendum dated 21.10.2015 for supply of iron ore fines by the Respondent to the Petitioner. Disputes having arisen, Petitioner filed ARB.P. No. 1256/2021 under Section 11 of 1996 Act before this Court for appointment of a Sole Arbitrator, which was allowed vide order dated 23.02.2022 along with O.M.P.(I) (COMM.) 42/2022 under Section 9 of 1996 Act, appointing a Sole Arbitrator and directing the Arbitrator to treat the Section 9 petition as an application Section 17 of 1996 Act.



3. It is stated that the Arbitrator entered upon reference on 20.03.2022 after giving declaration under Section 12 of 1996 Act. Section 17 application was taken for arguments on 24.05.2022 but was adjourned since Respondent gave an undertaking not to alienate the fixed assets and create any further charge. After completion of pleadings, Section 17 application was taken up for hearing on 19.12.2022 and order was reserved. Issues were framed on 14.03.2023 and parties filed evidence affidavits on 02.05.2023. Respondent filed an application for termination of proceedings on 15.05.2023 under Section 28(1)(a) read with Section 32(2)(c) of 1996 Act. As the statutory period of twelve months was to expire on 25.11.2023, Petitioner filed O.M.P.(MISC.) (COMM.) 624/2023 in this Court and vide order dated 01.12.2023, mandate of the learned Arbitrator was extended for six months till 25.05.2024. Thereafter, again the mandate was extended for six months vide order dated 23.07.2024 in O.M.P.(MISC.) (COMM.) 448/2024 w.e.f. the date of the order and the period from and after 25.05.2024 was regularised. As the mandate was expiring on 23.01.2025, this petition was filed by the Petitioner for further extension.

4. Mr. Rajiv Nayar, learned Senior Counsel for the Petitioner submits that arbitral proceedings commenced on 20.03.2022. Cross-examination of Petitioner's witness concluded on 10.08.2024 but thereafter there has been no progress. Learned Arbitrator scheduled the cross-examination of Respondent's witnesses for 30.08.2024 and 31.08.2024 but the same was rescheduled for 16.12.2024 to 19.12.2024. At this stage, an adjournment was sought by the Respondent on the ground of unavailability of the witnesses on these dates. Petitioner requested the learned Arbitrator to pass suitable directions for production of Respondent's witnesses, but there was no



response. It is submitted that the order under Section 17 was reserved on 19.12.2022 but has not been pronounced till date and even otherwise, there is no substantial progress in the proceedings. It is also submitted that efforts to communicate with the learned Arbitrator for fixing the dates have been unsuccessful. In this backdrop, it is strenuously urged that a substitute Arbitrator be appointed and mandate be extended by six months to enable conclusion of the arbitral proceedings and pronouncement of the award, since the Petitioner, who is the Claimant, is suffering monetary losses.

5. Counsel for the Respondent *per contra* submits that Petitioner has levelled unwarranted allegations of delaying the arbitration process. It is urged that Respondent is not responsible for any unnecessary adjournment and record would show that Petitioner has also sought adjournments on a few occasions and cannot blame the Respondent. It is argued that this Court has already extended the mandate of the learned Arbitrator twice earlier and Section 29A proscribes a third extension and in this context, reliance is placed on sub-Section (4) of Section 29A.

6. Heard.

7. Coming to the contention of the Respondent that this petition is not maintainable on the ground that a third application for extension of the mandate of the Arbitrator is not envisaged under provisions of Section 29A, in my view, the same merits rejection. By its plain reading, Section 29A of 1996 Act does not proscribe entertaining more than one application for extension of the mandate of the Arbitrator. This is of course subject to a caveat that the Petitioner will have to show a sufficient cause for grant of extension. There can be no dispute that Section 29A has been enacted with the objective that arbitral proceedings are concluded expeditiously, but at the



same time, one cannot lose sight of the fact that in a given case there may be myriad of reasons for which a party to the arbitration may be able to make out ‘sufficient cause’ for extension and therefore, a rigid and strict interpretation of Section 29A that the provision limits the number of times a petition can be filed for extension of mandate, may lead to grave injustice. If the Legislature intended any such restriction, there was no stopping in providing so in Section 29A. The Madras High Court in ***M/s. Powergear Limited, Chennai v. M/s. Anu Consultants, Hyderabad, Application No. 101/2025***, decided on 05.02.2025, has also taken the view that there is no restriction in the number of times that a party to an arbitral proceeding can seek extension of the mandate of the Arbitrator and upon showing sufficient cause, the Court may grant extension, even if it is sought more than once. The Court has also held that prescribing a prohibition on the number of times party can approach seeking extension of Arbitrator’s mandate will lead to penal and fatal consequences and will do disservice to the object of introducing a provision such as Section 29A. This Court is, therefore, unable to agree with the Respondent that this petition is not maintainable as by this petition, Petitioner seeks extension of the mandate for the third time.

8. The next question is whether Petitioner has made out a sufficient cause for grant of extension. Having carefully gone through the list of dates and events presented by the Petitioner, it is clear that Petitioner is not responsible for causing delay in concluding the arbitral proceedings. Petitioner filed its Statement of Claim and the rejoinder as also reply to Respondent’s Counter Claim without any delay. Petitioner also approached the Court on two earlier occasions, when the mandate was set to expire. Various e-mails were sent by the Petitioner to the learned Arbitrator from



31.01.2024 to 09.02.2024 to schedule a hearing at the earliest on the termination application filed by the Respondent, which was then scheduled on 22.03.2024 and the arguments were concluded on the same day. The application was dismissed on 06.04.2024, whereafter Petitioner again sent a number of e-mails from 25.04.2024 to 21.05.2024 seeking confirmation for the dates, but there was no response.

9. Documents on record evidence that Petitioner was consistently following up with the Arbitrator vide e-mails from 12.06.2024 to 15.07.2024 requesting to schedule a hearing at the earliest. On 23.07.2024, this Court extended the mandate by six months from the date of the order. Thereafter, the learned Arbitrator fixed the dates for cross-examination of Petitioner's witness, which was concluded on 10.08.2024, but cross-examination of Respondent's witnesses is pending till date. In my view, Petitioner has made out a sufficient cause for seeking extension of the mandate so that arbitral proceedings can be concluded expeditiously.

10. Insofar as the substitution of the learned Arbitrator is concerned, it can be seen that there has been no substantial progress in the arbitral proceedings since 30.08.2024. The learned Arbitrator reserved the order on an application filed by the Petitioner under Section 17 of 1996 Act on 19.12.2022 but the order has not been pronounced till date. Petitioner additionally urges that repeated efforts to connect to the learned Arbitrator for scheduling the dates have also failed. There can be no quarrel that parties choose arbitration as an alternate dispute resolution mechanism so that there is an expeditious adjudication of their claims and/or counter claims and therefore, importance of concluding the arbitral proceedings at the earliest hardly needs to be emphasised. In this context, I may refer to the judgment



of the Supreme Court in ***Union of India and Others v. Uttar Pradesh State Bridge Corporation Limited***, (2015) 2 SCC 52, relevant passages from which are as follows:-

“14. Speedy conclusion of arbitration proceedings hardly needs to be emphasised. It would be of some interest to note that in England also, Modern Arbitration Law on the lines of Uncitral Model Law, came to be enacted in the same year as the Indian law which is known as the English Arbitration Act, 1996 and it became effective from 31-1-1997. It is treated as the most extensive statutory reform of the English arbitration law. Commenting upon the structure of this Act, Mustill and Boyd in their Commercial Arbitration, 2001 companion volume to the 2nd Edn., have commented that this Act is founded on four pillars. These pillars are described as: (a) The first pillar : Three general principles. (b) The second pillar : The general duty of the Tribunal. (c) The third pillar : The general duty of the parties. (d) The fourth pillar : Mandatory and semi-mandatory provisions. Insofar as the first pillar is concerned, it contains three general principles on which the entire edifice of the said Act is structured. These principles are mentioned by an English Court in its judgment in Deptt. of Economics, Policy and Development of the City of Moscow v. Bankers Trust Co. [2005 QB 207 : (2004) 3 WLR 533 : (2004) 4 All ER 746 : 2004 EWCA Civ 314] In that case, Mance, L.J. succinctly summed up the objective of this Act in the following words : (QB p. 228, para 31)

“31. ... Parliament has set out, in the Arbitration Act, 1996, to encourage and facilitate a reformed and more independent, as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interests of the public and of basic fairness.” Section 1 of the Act sets forth the three main principles of arbitration law viz.

- (i) speedy, inexpensive and fair trial by an impartial tribunal;*
- (ii) party autonomy; and*
- (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles.*

15. In the book O.P. Malhotra on the Law and Practice of Arbitration and Conciliation (3rd Edn. revised by Ms Indu Malhotra), it is rightly observed that the Indian Arbitration Act is also based on the aforesaid four foundational pillars.

16. First and paramount principle of the first pillar is “fair, speedy and inexpensive trial by an Arbitral Tribunal”. Unnecessary delay or expense would frustrate the very purpose of arbitration. Interestingly, the second principle which is recognised in the Act is the party autonomy in the



choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have agreed to, that has to be generally resorted to. It is because of this reason, as a normal practice, the court will insist the parties to adhere to the procedure to which they have agreed upon. This would apply even while making the appointment of substitute arbitrator and the general rule is that such an appointment of a substitute arbitrator should also be done in accordance with the provisions of the original agreement applicable to the appointment of the arbitrator at the initial stage. [See *Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd.* [(2006) 6 SCC 204]] However, this principle of party autonomy in the choice of procedure has been deviated from in those cases where one of the parties have committed default by not acting in accordance with the procedure prescribed. Many such instances where this course of action is taken and the Court appoint the arbitrator when the *persona designata* has failed to act, are taken note of in paras 6 and 7 of *Tripple Engg. Works [North Eastern Railway v. Tripple Engg. Works, (2014) 9 SCC 288 : (2014) 5 SCC (Civ) 30]*. We are conscious of the fact that these were the cases where appointment of the independent arbitrator made by the Court in exercise of powers under Section 11 of account of “default procedure”. We are, in the present case, concerned with the constitution of substitute Arbitral Tribunal where earlier Arbitral Tribunal has failed to perform. However, the above principle of default procedure is extended by this Court in such cases as well as is clear from the judgment in *Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246]*.

18. In *Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246]* pendency of arbitration proceedings for over a decade was found by this Court to be a mockery of a process. This anguish is expressed by the Court in the said judgment in the following manner : (SCC p. 527, paras 15-19)

“15. The object of the alternative dispute resolution process of arbitration is to have expeditious and effective disposal of the disputes through a private forum of the parties' choice. If the Arbitral Tribunal consists of serving officers of one of the parties to the dispute, as members in terms of the arbitration agreement, and such tribunal is made non-functional on account of the action or inaction or delay of such party, either by frequent transfers of such members of the Arbitral Tribunal or by failing to take steps expeditiously to replace the arbitrators in terms of the arbitration agreement, the Chief Justice or his designate, required to exercise power under Section 11 of the Act, can step in and pass appropriate orders.



16. We fail to understand why the General Manager of the Railways repeatedly furnished panels containing names of officers who were due for transfer in the near future. We are conscious of the fact that a serving officer is transferred on account of exigencies of service and transfer policy of the employer and that merely because an employee is appointed as arbitrator, his transfer cannot be avoided or postponed. But an effort should be made to ensure that officers who are likely to remain in a particular place are alone appointed as arbitrators and that the Arbitral Tribunal consisting of serving officers, decides the matter expeditiously.

17. Constituting Arbitral Tribunals with serving officers from different faraway places should be avoided. There can be no hard-and-fast rule, but there should be a conscious effort to ensure that the Arbitral Tribunal is constituted promptly and arbitration does not drag on for years and decades.

18. As noticed above, the matter has now been pending for nearly ten years from the date when the demand for arbitration was first made with virtually no progress. Having regard to the passage of time, if the Arbitral Tribunal has to be reconstituted in terms of Clause 64, there may be a need to change even the other two members of the Tribunal.

19. The delays and frequent changes in the Arbitral Tribunal make a mockery of the process of arbitration. Having regard to this factual background, we are of the view that the appointment of a retired Judge of the Delhi High Court as sole arbitrator does not call for interference in exercise of jurisdiction under Article 136 of the Constitution of India.”

11. In the facts and circumstances of this case, I am constrained to terminate the mandate of the learned Arbitrator. This would, however, not be construed as casting any aspersions on the learned Arbitrator with respect to his impartiality or independence.

12. Accordingly, this petition is allowed, appointing Mr. Justice Pradeep Nandrajog, former Chief Justice, Bombay High Court (Mobile No. 9818000130) as substitute Arbitrator. Learned Arbitrator shall continue the proceedings from the stage already reached in the arbitral proceedings and



the fee of the Arbitrator will be fixed in consonance with order dated 23.02.2022. Mandate of the Arbitrator is extended by a period of six months from today and period between 24.01.2025 to 26.05.2025 is regularised. Learned Arbitrator is requested to conclude the proceedings within the extended period.

13. Petition stands disposed of.

JYOTI SINGH, J

MAY 27, 2025/shivam