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

+ O.M.P.(MISC.)(COMM.) 120/2024

GLOWSUN POWERGEN PRIVATE LIMITEDPetitioner

Through: Ms. Chandreyee Maitra and
Ms. Asmita Srivastav, Advocates.

versus

HAMMOND POWER SOLUTIONS PRIVATE LIMITED

..... Respondent

Through: Mr.Moazzam Khan, Mr.Aniruddha
Chaudhary, Ms.Anvita Goel,
Mr.Amrit Bhatia, Mr.Rohit and
Mr.Prince Kumar, advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **28.05.2024**

I.A. 4035/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P.(MISC.)(COMM.) 120/2024

1. By way of the present petition filed under Section 29A of the Arbitration and Conciliation Act, 1996, the petitioner seeks extension of mandate of the Arbitral Tribunal by a period of one year.
2. Learned counsel for the petitioner submits that the mandate of the Arbitral Tribunal has expired on 29.02.2024.
3. Learned counsel for the respondent accepts notice and has raised objections to the extension of the mandate on the ground that mandate cannot be extended after the expiration of the same. It has been submitted that extension has been sought only after the same had

already expired.

4. Ld Counsel for the respondent submitted that the Petitioner/ Claimant's conduct since the inception of the ongoing arbitration proceedings (which commenced on 23.11.2021), has significantly impeded the advancement of the arbitral process, resulting in its current pending status even after 27 months. Learned counsel for the Respondent further submitted that the Pleadings (as defined in Section 23(4) read with 29A of the A&C Act, 1996) were completed on 22.06.2022. As per Section 29A of the A&C Act, 1996, the 12-month period expired on 21.06.2023. The 6-month extension granted on 31.08.2023 (which would have to operate retrospectively from 22.06.2023) expired on 21.12.2023. He submitted that the Petitioner/ Claimant's delay made it impossible to complete the arbitration process by 29.02.2024.
5. The coordinate bench of this court in the matter ***KMP Expressways Limited vs IDBI Bank Limited (OMP. (MISC)(COMM) 553/2023)*** has inter-alia held:

“2. In the present case, the mandate of the Arbitral Tribunal expired on 11.12.2022. Thereafter, the petitioner wrote an e-mail dated 13th March, 2023 to the respondent seeking consent over extension of the mandate of the Arbitral Tribunal for a period of 6 months. The said e-mail was not responded to by the respondent.

3. The petitioner thereafter filed the present petition under Section 29A on 30.09.2023 (after expiry of the mandate).

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*9. This Court in **ATS Infrastructure vs. Rasbehari Traders, OMP(T)(COMM) 91/2023** has held as under:-*

“6. The Court has considered the aforementioned submissions, and it is not inclined to accept that Section 29A bars applications

submitted after the expiry of the mandate from being entertained. The language of the provision is clear; "...the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period..." which plainly provides that an application under Section 29A may be allowed even after the expiry of the mandate. Relevant portions of Section 29A is reproduced below to aid the reading of our analysis:

"29A. Time limit for arbitral award.--(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23

....

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

*(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, **either prior to or after the expiry of the period so specified**, extended the period:*

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay. Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the

arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal ”

(emphasis supplied)

7. Our observations are supported by ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited, whereby this Court has categorically held that grant of extension of time is permissible even if the petition under Section 29A has been filed after the expiry of the time period. The judgment in ATC Telecom (supra) categorically disagreed with the findings in Rohan Builders (supra) relied upon by the ATS Group. The Calcutta High Court in Rohan Builders (supra) held that petitions seeking extension of time cannot be entertained after the expiry of the mandate, on grounds that the legislature has explicitly introduced the word „terminate” in Section 29A(5), as opposed to „revival” or „renewal” of arbitral proceedings upon filing of the extension application. The Court also drew attention to the proposed provisions in 176th Law Commission Report, the language of „suspension” of mandate was deliberately not chosen in favor of “termination”.

8. *This Court, in ATC Telecom, disagreed with the view taken in Rohan Builders, observing that no explicit outer limits have been prescribed in Section 29A, and that it clearly provides for extension in appropriate cases. Indeed, the intention is evidently not to prescribe inflexible timelines and eliminate the discretion of the Court; if it were so, specifying that explicitly would have been simple. The recommendations of the Law Commission could not be relied upon and interpreted against the plain words of the statute.*

9. *The judgment of Datar Switchgears (supra) advanced by ATS Group is also wholly inapplicable to the present case. The dispute before the Supreme Court was based on an arbitration clause whereby unilateral right to nominate the arbitrator was given to one party, and the legal issue was whether such a right is forfeited when 30 days have elapsed, the party has not appointed an arbitrator before the other party has filed an application under Section 11. The provisions of Section 11 and Section 29A are not parimateria and the words of Section 29A(4) clearly provides for extension after the expiry of the period.”*

11. *Therefore, it is clear that mandate of arbitral tribunal is extendable even after expiry of the mandate of the tribunal. This court while extending the mandate of the arbitral tribunal is only required to see if there is sufficient cause. The parties have invested considerable time, effort, energy and finances in prosecuting the arbitration proceedings. The “sufficient cause” as mandated in section 29A(5) of the Arbitration and Conciliation Act, 1996 has to be construed in this regard. Reliance is placed upon the dicta of this court in Iqbal Singh v Naresh Kumar, 2023 SCC OnLine Del 7587. The operative portion reads as under:-*

“12. The arbitration proceedings between the parties have consumed a substantial amount of time. It is also a fact that the present petition has been filed with some delay. There is no gainsaying that the petitioner has displayed laxity in pursuing the matter.

13. However, since the arbitration proceedings, albeit protracted, have advanced to the stage of adducing of claimant's evidence, this Court is inclined to grant a suitable time extension to ensure that the elaborate arbitral exercise is not rendered futile, and the arbitration is taken to its logical conclusion.

14. In the aforesaid conspectus, while expressing anguish at the inordinate delay that has taken place in completion of arbitral proceedings, in order to ensure that the elaborate arbitral exercise is not rendered futile, this Court extends the time period for completion of arbitration proceedings and making of the arbitral award till 30.06.2024.”

6. In the present case also the arbitration proceedings are continuing for the last around two and half years. Though the delay as alleged against the petitioner is not appreciated, yet since the parties and the learned Arbitrator have already invested huge efforts, it would not be advisable to make it futile by not extending the mandate. However, this court directs the parties to not to cause any delay. Learned Arbitrator is also requested to expedite the proceedings.
7. Thus, taking into account the totality of the facts and circumstances, the present petition is allowed and the mandate of the Arbitral Tribunal is extended till 31.12.2024. Further, the period lapsed from 29.02.2024 till date is also regularised.
8. The petition along with all the miscellaneous applications stands disposed of.

DINESH KUMAR SHARMA, J

MAY 28, 2024

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