

\$~32

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

+ O.M.P.(MISC.)(COMM.) 618/2024

M/S CHINAR STEEL INDUSTRIES Petitioner
Through: Ms. Manpreet Kaur, Advocate.

versus

IRCON INTERNATIONAL LIMITED Respondent
Through: Mr. S.K. Chandwani, Mr. Sameer
Chandwani, Advocates
[9810048778]

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER

% **16.08.2024**

I.A. 36572/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**O.M.P.(MISC.)(COMM.) 618/2024 & I.A. 36571/2024 (for
continuation of arbitral proceedings)**

1. This petition has been filed, under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking extension of the mandate of the Arbitral Tribunal, which is in *seisin* of disputes between the parties under an agreement dated 15.09.2008, for construction of foot over bridges on the Qazigund-Baramulla section of new BG rail link project in Jammu and Kashmir.

2. Mr. S.K. Chandwani, learned counsel for the respondent, who appears on advance notice, states that the respondent has no objection to

the continuance of the arbitral proceedings before the learned arbitrator. However, it is his contention that Section 29A of the Act does not apply to the proceedings at hand, as the proceedings were commenced, within the meaning of Section 21 of the Act, well prior to the insertion of Section 29A into the Act.

3. The arbitration clause was invoked by the petitioner on 14.04.2009. As the parties failed to achieve a consensus on the appointment of the arbitral tribunal, the petitioner first approached the High Court of Jammu and Kashmir, under Section 11 of the Act [Arbitration Application 8/2009]. The petition was dismissed for lack of territorial jurisdiction, by an order dated 16.08.2013. A review petition [RPC No. 2J/2013] was also dismissed on 19.07.2018, following which the petitioner preferred an appeal before the Division Bench of the High Court of Jammu and Kashmir [LPAC No. 5/2018]. The Division Bench dismissed the appeal on the ground of maintainability.

4. The petitioner then approached this Court [in ARB.P. 1019/2022], which was the jurisdictional Court under Section 11 of the Act, and constituted the Arbitral Tribunal by an order dated 20.09.2022.

5. Before the learned Arbitrator, parties have filed their pleadings, led evidence and final hearing is in progress, at the stage of rejoinder arguments by learned counsel for the petitioner/claimant.

6. While Mr. Chandwani, as stated above, does not object to continuation of the proceedings before the learned arbitrator, it is his contention that the facts disclosed above show that the mandate of the Arbitral Tribunal is not subject to the time limit provided in Section 29A of the Act. He contends that Section 29A of the Act was inserted by the

Arbitration and Conciliation (Amendment) Act, 2015 [“the Amending Act”], with effect from 23.10.2015. Section 26 of the Amending Act provided that the provisions thereof would apply to arbitral proceedings commenced thereafter, unless parties agree otherwise. Though Section 26 of the Amending Act has since been repealed, Section 87 has been incorporated in the principal Act, which is to the same effect. The “commencement” of arbitral proceedings is governed by Section 21 of the Act, which states that an arbitral proceeding, in respect of a particular dispute, commences on the date on which the request to refer that dispute is received by the respondent. Mr. Chandwani draws my attention to the judgment of this Court in *Republic of India Through Ministry of Defence vs. M/s Agusta Westland International Ltd.* [dated 09.01.2019 in CS(COMM) 9/2019] and in *Zillion Infraprojects Pvt. Ltd. Through Anant Saxena vs. Fab-Tach Works & Constructions Pvt. Ltd.* [dated 19.12.2023 in O.M.P.(MISC.)(COMM) 674/2023], in support of his contentions.

7. The question of applicability of the provisions, appears to be answered in accordance with the submissions of Mr. Chandwani, in the two judgments referred to by him. Although the judgment in *Republic of India* (supra) was rendered in a civil suit, the suit itself was for a declaration that mandate of the arbitral tribunal had expired under Section 29A of the Act. The Court held that the “commencement” of proceedings is the relevant yardstick for determining applicability of the Section, and is different from the concept of “entering upon the reference” referred to in Section 29A of the Act as it then stood. The Court therefore came to the conclusion that commencement under Section 21 of the Act, having occurred prior to 23.10.2015, would not attract the applicability of

Section 29A of the Act. The judgment in *Zillion Infraprojects Pvt. Ltd.* (supra) is to the same effect.

8. The only distinction, in the present case, is to the extent that the Arbitral Tribunal was constituted on 20.09.2022, after the insertion of Section 29A of the Act. Having regard to the analysis of the provisions and the judgments of this Court cited above, I am of the view that this distinction is irrelevant. There was admittedly no further notice of invocation after the conclusion of proceedings in the High Court of Jammu and Kashmir, so as to constitute a fresh “commencement” within the meaning of Section 21 of the Act.

9. It is pointed out by Ms. Manpreet Kaur, learned counsel for the petitioner, that this stand has been taken by the respondent for the first time in this Court. She has placed on record the order of the learned arbitrator dated 01.08.2023, regarding lack of the mandate of the Arbitral Tribunal under Section 29A of the Act, and directing the respondent to provide its consent for this purpose. The respondent did not suggest that the provision is inapplicable. She is therefore apprehensive that the respondent may change its stand on this account.

10. Mr. Chandwani submits that it may be recorded that the respondent will remain estopped from raising this ground for any purposes, that the present proceedings may be taken to have been “commenced” on 14.04.2009 in terms of Section 21 of the Act, and that the provisions of Section 29A of the Act do not apply to the present petition. He also expressly states that, in any event, the respondent has no objection to the proceedings continuing before the learned arbitrator for the period sought in this petition.

11. The petition, alongwith the pending application, is disposed of with these observations.

PRATEEK JALAN, J

AUGUST 16, 2024/ 'Bhupi' /

