

Calcutta High Court

HON'BLE JUDGE(S): **SHEKHAR B. SARAF , J**

P G AND W SAWOO PVT. LTD.

V.

UNION OF INDIA, MINS OF FINANCE DEPT OF REVENUE

IA - 2 of 2023, decided on 27/04/2023

Arbitration and Conciliation Act (26 of 1996) , S.29A— Time limit for arbitral award - Extension - Delay caused was such that it may arise in ordinary course of proceedings, arbitral or otherwise - Pleadings were already completed and certain witnesses were examined - Parties can not be tainted with any blame - Sufficient cause to allow application else entire arbitral proceeding held so far would have been for nought - Mandate of arbitrator for making award, extended for period of nine months.

(Para 5)

Name of Advocates

S. N. Mitra, Sr. Adv. Suchayan Banerjee, Ms. Souradeep Banerjee, Mrs. S. K. Banerjee for Petitioner; Uday Sankar Bhattacharya, Tapan Bhanja for Respondent.

- ORDER:-**This is an application under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for extension of the period of mandate of the arbitrator for making an award.
- The petitioner had approached this Court by way of an application, being A.P. 270 of 2020, for appointment of an arbitrator. This Court had appointed an arbitrator vide order dated December 16, 2020, who later refused to assume the role of an arbitrator. The petitioner again filed an application, being G.A. No.1 of 2021 in A.P. 270 of 2020 for replacement of the arbitrator, which was allowed and Mr. Ajoy Krishna Chatterjee, senior advocate, Bar Library Club, High Court at Calcutta, was appointed vide order dated April 12, 2021.

3. The first arbitral sitting was held on May 4, 2021 whereupon necessary direction was passed by the arbitrator for filing of pleadings. The petitioner filed its statement of claim on July 2, 2021 and evidence-in-chief on September 4, 2021. The respondent filed its counter statement on August 28, 2021. Later on, the respondent filed its amended counter statement. Consequent upon such amendment of the counter statement, the petitioner filed its additional rejoinder on April 18, 2022 and supplementary evidence on affidavit on April 22, 2022.

4. The trial commenced on May 2, 2022 before the arbitrator with the examination-in-chief of the petitioner's witness No. 1 and the cross-examination by the respondent. Later on, examination-in-chief and cross-examination of the petitioner's witness No. 2 and respondent's witness No. 1 were held. On April 10, 2023, it was noted by the arbitrator that the mandate was due to be terminated by reason of efflux of time on April 17, 2023. While the petitioners were willing to give consent for extension of the period of mandate as per Section 29A of the Act, the respondent did not.

5. The petitioner has contended that the time has expired without any blame attributable to it. Whereas, the respondent contended that the said extension of the period of mandate of the arbitrator can only be granted if there is sufficient cause indicated by the petitioner, which has not been done. In my view, the petitioner is correct in contending that the delays that have crept in are such that may arise in the ordinary course of proceedings, arbitral or otherwise. Pleadings have already been completed and certain witnesses have also been examined. I do not find that either side can be tainted with any blame. Therefore, there is sufficient cause to allow the instant application, or else the entire arbitral proceeding held so far would have been for nought.

6. Since affidavits have not been exchanged, all allegations are deemed to be contested and denied.

7. Accordingly, the mandate of the arbitrator for making the award is extended for a period of nine months. Consequentially, G.A. 2/2023 in A.P. 270/2020 is disposed of.

8. An urgent Photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

Petition Allowed