

# M/S Swadeshi Civil Infrastructure ... vs Delhi Tourism & Transportation ... on 1 December, 2020

**Author: Rekha Palli**

**Bench: Rekha Palli**

Via video conference

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 01.12.20

+ O.M.P.(MISC.)(COMM.) 356/2019 & I.A. 6970/2020

M/S SWADESHI CIVIL INFRASTRUCTURE PRIVATE LIMITED

..... Petitioner

Through: Mr. Dinkar Singh, Adv.

versus

DELHI TOURISM & TRANSPORTATION DEVELOPMENT  
CORPORATION,

..... Respondent

Through: Mr. S.B.Upadhyay, Sr. Adv. with  
Ms.Anisha Upadhyay, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. This is a petition under Section 29A of the Arbitration and Conciliation Act, 1996 ('the Act') seeking extension of time for completion of the arbitration proceedings and rendering of the award.

2. Learned counsel for the petitioner submits that upon disputes having arisen between the parties in relation to contract dated 19.07.2011, arbitration was invoked, and a sole arbitrator was appointed by the respondent on 27.06.2017. The said appointment was assailed by the petitioner by way of a petition under Section 14 of the Act and, consequently, this Court, with the consent of the parties, terminated the mandate of the arbitrator appointed by the respondent and appointed Shri. AK Singhal as the sole Arbitrator on 21.02.2018. The learned Arbitrator appointed by this Court, entered upon reference on 07.03.2018 and directed the petitioner to file its statement of claim. The pleadings were completed on 28.02.2019, whereafter the petitioner concluded its oral submissions on 23.08.2019. The respondent was yet to commence its submissions but, in the meanwhile, the mandate of the learned Arbitrator expired on 05.09.2019. He, therefore, prays that the time be suitably extended.

3. The respondent has filed a reply vehemently opposing the petition primarily on the ground that the learned Arbitrator is conducting the proceedings in a wholly arbitrary manner and has been permitting the petitioner to place documents on record without following the laid down procedure and without dealing with the respondent's repeated written objections.

4. Learned senior counsel for the respondent opposes the petition by reiterating the submissions made in the reply and contends that the learned Arbitrator has not only taken on record various documents filed by the petitioner without following the laid down procedure, but has also been permitting the petitioner to raise arguments based on documents which do not form part of the record. He, therefore, urges this Court to appoint a substitute Arbitrator.

5. In response, learned counsel for the petitioner, while denying that the learned Arbitrator is not following the prescribed procedure or permitting the petitioner to make submissions which are not based on the record, contends that even otherwise, the grounds urged by the respondent are beyond the ambit of Section 29A of the Act. He submits that while considering an application for extension of time, the Court is only required to examine whether the extension sought is for justifiable reasons. In support of his contentions, he places reliance on the decision of a Coordinate Bench in *Orissa Concrete and Allied Industries vs. Union of India* [OMP (MISC.) (COMM.) 10/2018], *Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI)* [2018 SCC OnLine Del 10184] and *NCC Ltd. Vs. Union of India through Director General, Married Accommodation Project & Anr.* [OMP (MISC.) (COMM.) 313/2018].

6. Having considered the submissions of the parties and perused the record, I find that it is a case where the learned Arbitrator has been diligently conducting the proceedings and has been holding hearings at regular intervals. It is also an admitted position that when the present petition seeking extension of time was preferred, the petitioner had already concluded its oral submissions and, therefore, it cannot be stated that there has been any delay on part of the learned arbitrator in attempting to expeditiously dispose of the arbitration proceedings. Even otherwise, while considering a petition seeking extension of time, this Court is expected to only consider whether the proceedings are being carried out with due promptitude. A petition under Section 29A of the Act cannot be permitted to be used by one of the parties to seek substitution of the arbitrator merely on the basis of its unsubstantiated apprehension that the learned Arbitrator is acting in a biased manner. In this regard, reference maybe made to the observations in *Para 11 of NCC Ltd. Vs. Union of India through Director General, Married Accommodation Project & Anr.* OMP (MISC.) (COMM.) 313/2018, which reads as under:

"11. Section 29A of the Act is intended to sensitize the parties as also the Arbitral Tribunal to aim for culmination of the arbitration proceedings expeditiously. It is with this legislative intent, Section 29A was introduced in the Act by way of Arbitration and Conciliation(Amendment) Act, 2015. This provision is not intended for a party to seek substitution of an Arbitrator only because the party has apprehension about the conduct of the arbitration proceedings by the said Arbitrator. The only ground for removal of the Arbitrator under Section 29A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process."

7. In the light of the aforesaid, it is evident that the respondent's grievance regarding the manner of conduct of the arbitration proceedings cannot be a subject matter of the present petition, especially when it is not denied by the respondent that the matter is already at a very advanced stage. Needless to state, the respondent will be free to raise its grievance, if any, regarding the manner of conduct of the arbitration proceedings in its petition under Section 34 of the Act while assailing the Award, if any, passed against it.

8. For the all aforesaid reasons, the petition is entitled to succeed and is, accordingly, allowed by extending the mandate of the learned arbitrator till 30.09.2021 as prayed for. As the petition has remained pending before this Court since 04.09.2019, this extension will be reckoned w.e.f. 06.09.2019.

9. The petition along with pending application is disposed of accordingly.

REKHA PALLI, J.

DECEMBER 1, 2020 'sdp'