

(2024) 06 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Arb. Case No.387 of 2024

Hindustan Petroleum Corporation Ltd. @APPELLANT @Hash M/s Amit Oil Carrier and Ors.

Date of Decision : 15-06-2024

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 23, 29A(4)

Citation : (2024) 06 SHI CK 0001

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Nitin Thakur, Rajiv Rai, Suneet Goel

Final Decision : Disposed Off

Judgement

Jyotsna Rewal Dua, J

These petitions have been preferred under Section 29A(4) of the Arbitration and Conciliation Act, 1996 for extension of time for completion of the arbitral proceedings by extending the mandate of the learned Sole Arbitrator.

2. It is jointly represented by learned counsel for the parties and is borne out from the documents placed in the case files that vide order dated 01.10.2018 passed in different arbitration cases instituted by the respondents/ claimants in this Court, an Arbitrator was appointed in all these matters. Thereafter, by an order dated 31.12.2019, the Arbitrator withdrew his consent to act as an Arbitrator. The petitioners preferred different arbitration cases seeking appointment of new Arbitrator. Vide common order dated 06.08.2021 passed in Arbitration Case Nos.10, 13 to 15 and 17 to 19 of 2021, new Arbitrator was appointed.

The Arbitrator entered upon the reference. The award could not be pronounced as the mandate of the Arbitrator was terminated with efflux of time on 29.08.2023. In the aforesaid circumstances, the petitioners have prayed for extending the mandate of the learned Sole Arbitrator for completing the arbitration proceedings by six months.

3. Section 29A of the Arbitration and Conciliation Act, 1996, setting down time limit for the arbitral awards, runs as under:-

"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 endeavour may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(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 subsection (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.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

Sub-Section (4) of the above extracted provision provides for extending the mandate of the Arbitrator by the Court. Learned counsel appearing on both sides submit that initially on account of COVID-19 pandemic and thereafter on account of severe monsoon season in the State of Himachal Pradesh, causing rampant destruction road blockage etc., the proceedings in the arbitration matters could not be concluded. It was further submitted that the claimants in all these matters have already led their evidence. It is only the petitioners who are to lead their evidence. That the matters otherwise are nearing completion. Learned counsel on both sides prayed for extending the period for completion of arbitral proceedings by six months.

4. Taking into consideration the above-mentioned facts and circumstances as also the submission of learned counsel for the petitioners and respondents/claimants that they do not have any objection for extending the mandate of the Arbitrator, these petitions are allowed. By exercising the power under Section 29A(4) of the Arbitration and Conciliation Act, the mandate of learned Arbitrator in deciding the petitions under reference is extended by six months from today, i.e. till 14.12.2024, as mutually agreed between the parties. The parties, through their learned counsel, are directed to appear before the learned Arbitrator on 21.06.2024, as mutually agreed between them.

The petitions stand disposed of in the above terms, so also the pending miscellaneous application(s), if any.