

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

I.A No. 02/2023
Arising out of
Arb. P. No. 03/2021

UNION OF INDIA

APPLICANT (S)

VERSUS

M/S NAR BAHADUR DAHAL

RESPONDENT (S)

For Applicant : Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Purnima Subba, Advocate.

For Respondent : Mr. Sajal Sharma, Advocate.

Date: 08/12/2023

CORAM :

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE

...

J U D G M E N T

This matter was initially mentioned by the learned Deputy Solicitor General of India at the first sitting of the Court today. This Court, after hearing her, directed the Registry to place the matter in the supplementary causelist and also directed the learned Deputy Solicitor General of India to inform the learned Advocate for the respondent who had earlier appeared in the matter.

When the matter is taken up for consideration, Mr. Sajal Sharma, learned Advocate appears on behalf of the respondent.

Before the application is taken up for hearing it is noticed by this Court that the petitioner has moved this application as a fresh Arbitration Petition (being Arbitration Petition No.02 of 2023) whereas it ought to be an interlocutory application in connection with Arbitration Petition No. 03 of 2021, since this application is essentially for the purpose of seeking extension of time for the Arbitrator to make his award in connection with Arbitration Petition No. 03 of 2021. This Court, therefore, directs the learned Deputy Solicitor General of India to make necessary changes in the application so that the Registry re-registers

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

the application as an interlocutory application in connection with Arbitration Petition No. 03 of 2021.

This is an application filed by the Union of India under section 29A of the Arbitration and Conciliation Act, 1996, seeking extension of the mandate of the Arbitrator, which is due to expire on 13th March, 2024.

The respondent consents to such prayer for extension of time.

For the purpose of granting extension of time for the Arbitrator to make his award, one has to — at first — look at sub-section (4) of section 29A of the Arbitration and Conciliation Act, 1996, which reads as follows: -

"29A. Time limit for arbitral award.—.....

(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.
....."

It is, therefore, evident that the Court has power to extend the time limit for an arbitral award to be made in terms of sub-section (4) of Section 29A of the Arbitration and Conciliation Act, 1996 (as quoted above). However, such extension of time can be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. This is clear from a plain reading of sub-section (5) of section 29A of the Arbitration and Conciliation Act, 1996, which reads as follows:-

"29A. Time limit for arbitral award.--

(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.
....."

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

In the facts of the instant case, the grounds for seeking extension of mandate of the learned Arbitrator has been clearly recorded in the 42nd sitting held on 06th December, 2023, before the learned Arbitrator. It appears therefrom that in view of the recent natural disaster which occurred in the State of Sikkim, both the parties had taken adjournment of the proceedings and therefore, the progress of the proceedings before the learned Arbitrator, was considerably hampered. Furthermore, Christmas vacation will also intervene in the meanwhile.

This Court is of the view that the reasons which appear in the minutes of the 42nd sitting held before the learned Arbitrator on 06th December, 2023, reflect sufficient cause shown for the purpose of granting extension of time for the learned Arbitrator to make an award in respect of the Arbitration Petition No. 03 of 2021.

This Court, therefore, grants six months' further time — to be calculated on and from 14th of March, 2024 — to enable the learned Arbitrator to make his award, in the meanwhile.

The application is accordingly disposed of.

(Biswanath Somadder)
Chief Justice