

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

I.A.No.1 of 2023 in/and ARBITRATION APPLICATION No.17 of 2023

SEW Vizag Coal Terminal Pvt. Ltd.,
Address at: 6-3-871, Snehalata,
Greenlands Road, Begumpet,
Hyderabad – 500016 and two others

...Applicants

Versus

Board of Trustees for the Port of Visakhapatnam
Rep. by its Secretary and Attorney to the Board,
Administrative Office Building, Port Area,
Visakhapatnam – 530035, Andhra Pradesh

...Respondent

Mr. Posani Akash, Counsel for the Applicants.

Mr. P. Sri Ram, Counsel for the respondent.

DATE : 10.05.2024

1. This arbitration application has been filed under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') seeking extension in the mandate of the arbitral tribunal for passing the arbitral award till 31.08.2023.

2. I.A.No.1 of 2023, also has been filed under Section 29A of the Act seeking extension in the mandate of the arbitral tribunal for passing the arbitral award till 06.02.2024.

3. Facts in brief:

The applicants and the respondent entered into a Concession Agreement for development of East Quarry-1A (EQ-1A) berth for handling

thermal coal and steam coal at Visakhapatnam Port on Design, Build, Finance, Operate and Transfer (DBFOT) basis. Disputes arose between the parties following the termination of the said Agreement by the respondent.

4. The applicants invoked the arbitration clause as per the Agreement and finally, an arbitral tribunal was constituted, which came to be subsequently reconstituted on account of the recusal of the arbitrator nominated by the applicants.

It appears that since the arbitral tribunal did not pass the award within the prescribed twelve months, parties consented to extend the period for a further period of six months.

5. An application bearing C.A.O.P. No.5 of 2020 came to be filed before the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam seeking extension of mandate of the tribunal. By virtue of order dated 24.02.2020 the mandate was extended by six months. Another C.A.O.P. bearing No.10 of 2020 was filed seeking a further extension of nine months for completion of the proceedings. This application was allowed granting extension of only six months vide order dated 01.04.2021.

6. The arbitration proceedings were concluded on 24.09.2021 and the matter was reserved for passing the award. However, in this interregnum,

the applicants' nominee arbitrator passed away on 17.12.2021 leading to the reconstitution of the arbitral tribunal once again. The applicants thereafter preferred C.A.O.P. No.12 of 2023 seeking the extension of mandate of the arbitral tribunal for passing the order.

Notwithstanding the filing of the aforementioned C.A.O.P. No.12 of 2023, the present application under Section 29A was filed by the applicants before this Court in view of the judgment and order dated 04.01.2023 of this Court in **M/s. K. V. Ramana Reddy vs. Rasthriya Ispat Nigam Limited**¹. What was held in paragraph 9 of the aforesaid judgment is reproduced hereunder:

“9. All the High Courts, in the Judgments mentioned above, had taken the same view that the Court, before whom an application for extension of time is filed, would also have, in view of section 29 A (6) of the Act, the power to replace the existing arbitral by appointing a new arbitrator. In view of this provision, the principle laid down in all the Judgments was that an application under Section 29(A) can be moved only by the Court having authority under Section 11 of the Arbitration and Conciliation Act, to appoint arbitrators and consequently it can only be the High Court or the Hon'ble Supreme Court, as the case may be, before whom an application for extension of time can be moved under section 29 A of the Act.”

¹ (2023) SCC OnLine AP 398; ARBAPPL No.50 of 2018

7. At this stage, it would also be pertinent to mention that the C.A.O.P. No.12 of 2023 came to be dismissed in default on 26.07.2023, by the Court below much after the filing of the present application under Section 29A of the Act.

8. At this stage, it would be pertinent to mention that in the present case admittedly the arbitral tribunal was not constituted by invoking the powers under Section 11 of the Act, but was constituted in accordance with the terms and conditions as were envisaged in the Agreement, defining the mechanism for resolution of disputes through arbitration.

9. A preliminary objection has been raised by the non-applicants with regard to maintainability of the present application under Section 29A before this Court, primarily on the ground that the applicants had already approached the Special Judge for Trial and Disposal of the Commercial Disputes at Visakhapatnam and had sought the same relief which is pending adjudication. It was further urged that the applicants were misinterpreting the judgment rendered in the **M/s. K. V. Ramana Reddy (supra)** as the said judgment was rendered in a case where the initial appointment of an arbitrator had been made under Section 11 and was certainly not dealing with the case where the arbitrator had been appointed without the intervention of the High Court.

10. The issue as to whether an application under Section 29A seeking extension of the mandate of the arbitral tribunal, is at all maintainable before the High Court or not has been decided by a Division Bench of this Court in **Dr. V. V. Subba Rao vs. Dr. Appa Rao Mukammala**², decided on 10.05.2024, wherein the Division Bench held as under:

“30. Section 29A(4) does not refer to the ‘Court’ as the High Court or the Supreme Court and therefore, the definition contained in Section 2(1)(e) has necessarily to be relied upon, which in the case of an arbitration other than international commercial arbitration means the Principal Civil Court of original jurisdiction in District and includes the High Court in exercise of its original civil jurisdiction having jurisdiction to decide the questions forming the subject matter of arbitration, if the same had been the subject matter of a Suit. If the intention of the Parliament were to vest the power of extending the mandate of an Arbitrator only in High Court as envisaged under Section 11, then nothing could have prevented it from providing so, as it did specifically in Section 11.

31. While some High Courts have taken a view that contextual interpretation of the provisions contained in Section 29A was required in view of the provisions of Section 2, which states “in this Part, unless the context otherwise requires” we are of the opinion that the context of Section 29A does not in any manner indicate that the word ‘Court’ in Section 29A should be construed otherwise than as has been defined under Section 2(1)(e).

² ARBAPPL NO.57 OF 2023 & batch

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35. Having considered the entire issue, we are of the opinion that this Court, not being a Court within the meaning of Section 2(1)(e) of the Act has no jurisdiction to entertain an application under Section 29A of the Act and hence the present applications are not maintainable. We leave it open to the applicants to approach the appropriate forum in accordance with law.”

11. In view of the issue having already been decided by a Division Bench of this Court, it is held that the present applications are not maintainable before this Court. We leave it open to the applicants to approach the appropriate forum in accordance with law. The Interlocutory Application No.1 of 2023 as also the Arbitration Application are, accordingly, dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, C.J.

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