

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 132 OF 2021

Mahmood Raza Khan	...	Petitioner
V/s.		
Larsen & Toubro Ltd.	...	Respondent

Ms. Dipti Mehta, Advocate for the Petitioner.
Mr. Shantanu Ray i/b. M/s. Manilal Kher Ambalal & Co., Advocate for the Respondent.

WITH
ARBITRATION PETITION NO. 146 OF 2018

Bharati Defence and Infrastructure Ltd.	...	Petitioner
V/s.		
Andaman and Nicobar Administration	...	Respondent

Mr. Abhishek Swaroop, Mr. Naman Kamdar i/b. Saraf & Partners Law
Offices, Advocate for the Petitioner.
None for the Respondent.

WITH
ARBITRATION PETITION NO. 1465 OF 2019
WITH
INTERIM APPLICATION (L) NO. 17263 OF 2021

Encore Asset Reconstructions Company Private Ltd. ... **Petitioner**
V/s.
Hemantkumar Anand Diwani & Ors. ... **Respondents**

.....
Adv. B. Gopalkrishnan a/w. Mr. Nilesh Ghadge for the Petitioner.
None for the Respondents.

.....
WITH
ARBITRATION PETITION NO. 1469 OF 2019
WITH
ARBITRATION PETITION NO. 1472 OF 2019

Encore Asset Reconstruction Co. Pvt. Ltd. ... **Petitioner**
V/s.
Swarna Navin Salian & Ors. ... **Respondents**

.....
Adv. B. Gopalkrishnan a/w. Mr. Nilesh Ghadge for the Petitioner.
Adv. R. Joshi a/w. Swapnil Kamble for the Respondents.

.....
WITH
ARBITRATION PETITION NO. 1469 OF 2019
WITH
ARBITRATION PETITION NO. 1472 OF 2019

Encore Asset Reconstruction Co. Pvt. Ltd. ... **Petitioner**
V/s.
Millennium Technorbit Limited & Ors. ... **Respondents**

.....
Adv. B. Gopalkrishnan a/w. Mr. Nilesh Ghadge for the Petitioner.
None for the Respondents.

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WITH
ARBITRATION PETITION NO. 177 OF 2020
WITH
ARBITRATION PETITION NO. 183 OF 2020
WITH
ARBITRATION PETITION NO. 188 OF 2020

Nobel Biocare India Pvt. Ltd. ... **Petitioner**
V/s.
Mr. Pasha S.A, Sole Proprietor of M/s. A Dent ... **Respondent**

.....
Adv. Aaushi Shah i/b. INDIANLAW LLP for the Petitioner.
None for the Respondent.

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WITH
ARBITRATION PETITION NO. 201 OF 2020

Sodexo Food Solutions India Pvt. Ltd. ... **Petitioner**
V/s.
Hayat Hospital Pvt. Ltd. ... **Respondent**

.....
Ms. Khooshnum R. Daviervala a/w. Mr. Yazdi Jijina i/b. Mulla & Mulla &
Craigie Blunt & Caroe, Advocate for the Petitioner.
None for the Respondent.

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WITH
ARBITRATION PETITION NO. 202 OF 2020

M/s. Paresh Constructions ... **Petitioner**
V/s.
Jai Hanuman Co-op. Hsg. Society Ltd. ... **Respondent**

.....
Adv. Ketki Gadkari for the Petitioner.
None for the Respondent.

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WITH
COMMERCIAL ARBITRATION PETITION (L) NO. 253 OF 2020

Bell Finvest India Limited ... **Petitioner**
V/s.
Raj Fleet Centre & Ors. ... **Respondents**

.....
Adv. Vinit J. Mehta a/w. Adv. Krinjal Ahuja for the Petitioner.
Mr. K. C. Prusty, Advocate for the Respondents.

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WITH

ARBITRATION PETITION (L) NO. 366 OF 2020

Matra Realty and Developers Ltd. ... **Petitioner**

V/s.

Tapodhan Griha Sahakari Society ... **Respondent**

.....

Adv. Anand Mishra i/b. Ashok M. Saraogi for the Petitioner.

Adv. Anil R. Mishra, Advocate for the Respondent.

.....
WITH

ARBITRATION PETITION (L) NO. 370 OF 2020

Gunina Commercials Pvt. Ltd. ... **Petitioner**

V/s.

National Co-operative Consumer
Federation of India Ltd. ... **Respondent**

.....

Adv. Anand Mishra i/b. Ashok M. Saraogi for the Petitioner.

Adv. Anil R. Mishra, Advocate for the Respondent.

.....
WITH

ARBITRATION PETITION NO. 375 OF 2020

A.S. Corporation ... **Petitioner**

V/s.

Shraddha Developers & Anr. ... **Respondents**

.....

Adv. R. M. Vasudeo for the Petitioner.

Mr. Iqbal Shaikh a/w. Ms. Ankita Sharma i/b. YMK Legal, Advocate for the
Respondents.

.....
WITH

ARBITRATION PETITION NO. 398 OF 2020

Ritesh Sanghani & Anr. ... **Petitioners**

V/s.

V One Infra & Ors. ... **Respondents**

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None for the Petitioners.

None for the Respondents.

.....
CORAM : G. S. KULKARNI, J.

DATE : SEPTEMBER 27, 2021.

ORAL ORDER :

1 These are petitions filed under Section 29A of the Arbitration and Conciliation Act, 1996 (for short, “ACA”), wherein the petitioners have prayed for extension of the mandate of the arbitral tribunal.

2 In considering the prayers as made in these petitions, the Court would be required to consider the intervening circumstances which had taken place and/or were prevailing during the pendency of these petitions, namely, the entire country being engulfed by the Covid-19 pandemic from the month of March 2020. It is a matter of common knowledge that for a substantial period the pandemic severely affected not only the normal Court proceedings, but equally affected the pending arbitral proceedings albeit some exceptions. The effect was certainly of a nature that the arbitral proceedings could not proceed in the usual normal manner as they could have otherwise proceeded. Considering these circumstances, the orders which were passed by the Supreme Court in the context of extension of limitation and relevant to Section 29A of the ACA are required to be noted.

3 On 23rd March 2020, the Supreme Court in the proceedings of Suo-

Motu Writ Petition (Civil) No(S).3/2020 in the case of in **Re : Cognizance for Extension of Limitation**¹ passed orders on the period of limitation being extended with effect from 15 March 2020 till further orders. Such order reads thus :

“1. This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

3. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

4. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

5. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

4 Thereafter, in such suo-moto proceedings the Supreme Court passed a further Order² on 6th May 2020 touching the ACA, which also needs to be noted. It reads thus:-

“1. By way of filing this application for directions, the applicant has made the following prayer :

“To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;”

1 (2020) 19 SCC 10.

2 2020 SCC OnLine SC 434.

2. In view of this Court's earlier order dated 23.03.2020 passed in *Suo Motu Writ Petition (Civil) No.3/2020* and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, **it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.**

3. In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

4. In view of the above, the instant interlocutory application is disposed of.

Ia No.48375/2020 - Clarification/Direction and IA No.48511/2020 - Clarification/Direction and IA No.48461/2020 - Clarification/ Direction and IA No.48374/2020 - Intervention Application and IA No.48416/2020 - Intervention Application and IA No.48408/2020 - Intervention Application

5. Issue notice.

6. Waive service on behalf of the respondent - Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf. Let notice be issued to other respondents."

(emphasis supplied)

5 On 10th July 2020, the Supreme Court passed a further order³ extending the earlier orders dated 23rd March 2020 and 6th May 2020 in the context of Section 29A of the ACA. The relevant extract of the said order is as follows:-

"1. Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-19 or the time to perform a particular act is to expire during the lockdown.

I.A. No. 49221/2020-Section 29A of the Arbitration and Conciliation Act, 1996

3 (2020) 9 Supreme Court Cases 468.

2. Taken on Board.

3. In Suo Moto Writ Petition (C) No. 3/2020, by our orders dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders.

4. Learned Attorney General has sought a minor modification in the aforesaid orders.

5. Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award Under Section 29A of the said Act....."

(emphasis supplied)

6 From the above order passed by the Supreme Court, it is clear that the Supreme Court applied the directions as contained in its previous orders dated 23rd March 2020 and 6th May 2020 for extension of time for passing of an arbitral award under Section 29A of the said Act. Thus by virtue of these orders of the Supreme Court, the time to publish an award, in the pending arbitral proceedings stood extended with effect from 15th March 2020 until further orders to be passed by the Supreme Court.

7 The Supreme Court passed a further Order on 8th March 2021⁴ whereby the Supreme Court in disposing of the suo-moto proceedings noted that the lockdown had been lifted as the country was returning to normalcy. In doing so in the context of Section 29A of the ACA, the Supreme Court observed that the period from 15th March 2020 till 14th March 2021 shall stand excluded in computing the period prescribed under Section 29A of

4 (2021) 5 Supreme Court Cases 452.

the ACA. The relevant extract of the said order needs to be noted, which reads thus :

1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 27-3-2020 (23-3-2020) this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15-3-2020 till further orders. The order dated 15-3-2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15-3-2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions :

2.1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.

2.2. In cases where the limitation would have expired during the period between 15-3-2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.

2.3. **The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996,**"

(emphasis supplied)

8 However in or about April, 2021, again throughout the country adverse circumstances emerged on the pandemic front. Considering such circumstances, the Supreme Court passed a further Order dated 27th April

2021⁵, on the suo-motu proceedings inter alia extending the period from 14th March 2021 till further orders to stand excluded in computing the periods prescribed under Section 23(4) and Section 29 of the ACA. The following are the directions of the Supreme Court relevant to the provisions of Section 29-A:-

“6. We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

7. **It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996..... ”**

(emphasis supplied)

9 Lastly, the Supreme Court by an Order passed on 23rd September 2021⁶ passed on the said suo-motu proceedings as also on Miscellaneous Application No.665 of 2021 directed that the period from 15 March 2020 till 2 October 2021 shall stand excluded in computing the period prescribed inter alia under Section 29 A of the ACA. The following are the directions of the Supreme Court:-

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

5 2021 SCC OnLine SC 373.

6 M.A. No.665 of 2021 in SMW(C) No.3 of 2020

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. **The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996**, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

As a sequel to disposal of MA No.665/2021, pending interlocutory applications, including the applications for intervention/impleadment, also stand disposed of. ”

(emphasis supplied)

10 From the above orders passed by the Supreme Court, the clear position which emerges is that the period from 15th March 2020 till 2nd October 2021 is directed to be excluded in computing the period prescribed under Section 29A of the ACA. This would mean that by virtue of the said orders of the Supreme Court, the mandate of the tribunal, if has expired during the period 15th March 2020 till 2nd October 2021, the said period would stand excluded in computing the period prescribed under Section 29A of the ACA. It would be thus required to be observed that for the purpose of Sub-section (2) of Section 29A of the ACA, which stipulates a requirement, that the award in matters other than international commercial

arbitrations shall be made by the arbitral tribunal, within a period of twelve months from the date of the completion of pleadings under sub-section (4) of Section 23 of the ACA, as also for the provisions of sub-section (3) and sub-section (4) of Section 29A, the period between 15th March 2020 till 2nd October 2021 would be required to be excluded.

11 On the above backdrop, it would be necessary to observe that there would be two categories of arbitral proceedings, firstly where the mandate has already come to an end prior to 15th March 2020 and those cases where mandate has come to an end after 2nd October 2021.

12 It appears that the present petitions are filed in relation to a period prior to 15th March 2020 during which the mandate of the arbitral tribunal had either expired or was to expire during such period when the pandemic had set in and had continued. In these circumstances, the petitioners would become entitled for an extension of the mandate of the arbitral tribunal as ordered by the Supreme Court.

13 As a result of the above discussion, it is in the interest of justice that these petitions are disposed of by the following order :

ORDER

- (i) In respect of the pending arbitral proceedings the petitioners would be entitled to the benefit of the order dated 23rd September 2021 (supra) passed by the Supreme Court for exclusion of the

period from 15th March 2020 to 2nd October 2021 in computing the period under Section 29A of the ACA.

- (ii) In the event, the arbitral proceedings for any reason have remained pending and/or are not concluded, in such event, the mandate of the arbitral tribunal is extended for a period of one year from today.
- (iii) All contentions of the parties on the merits of the arbitral proceedings are respectively kept open.
- (iv) The petitions are disposed of in above terms.
- (v) No costs.

(G. S. KULKARNI, J.)

RAJU
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