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*A.No.3401 of 2022
in O.P.No.350 of 2020*

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in
O.P.No.350 of 2020
M.SUNDAR, J.,

This order will now dispose of the captioned application.

2. Mr.Madhan Babu, learned counsel on record for lone applicant and Ms.Rohini Ravikumar, learned counsel on record for sole respondent are before this Court. Both learned counsel, adverting to earlier proceedings of this Court dated 18.08.2022 submit that earlier proceedings made in the previous listing (18.08.2022) captures the essential facts and crux and gravamen of the matter correctly. Therefore, this 18.08.2022 proceedings shall be read as an integral part and parcel of this order and the same reads as follows:

'Captioned application has been taken out inter alia under Section 29A(4) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) [hereinafter 'A and C Act for the sake of convenience and clarity] with a prayer for extension of the time frame vide sub-section (1) of Section 29A i.e., time frame for making of arbitral award i.e., 12 months from the date of completion of pleadings under Section 23(4) of A and C Act.



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2. Mr.Madhan Babu, learned counsel for applicant along with Ms.Simran Srinivasan for the applicant is before this Court. Ms.Rohini Ravikumar, learned counsel who is before this Court accepts notice on behalf of the respondent.

3. This Court is informed by learned counsel on both sides that the date of completion of pleadings within the meaning of Section 23(4) of A and C Act is 27.03.2021. This means that 12 months therefrom (to be noted, within 12 months) would be on or before 26.03.2022. In the interregnum owing to the 'Corona virus pandemic and consequent lock down' [hereinafter collectively 'Covid-19' for convenience] which none could portend or presage intervened and Hon'ble Supreme Court made orders in Suo Motu Writ Petition (C) No.3 of 2020 and miscellaneous applications thereat.

4. Attention of this Court was drawn to order of Hon'ble Supreme Court dated 10.01.2022 and more particularly sub-paragraph (IV) of Paragraph 5 thereat, which reads as follows:

5.....

I.....

II.....

III.....

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in



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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.'

5. The above scenario means that the exclusion made by Hon'ble Supreme Court owing to Covid-19 kicked in even before the date of completion of pleadings and that was operating till 28.02.2022. This also means that the aforementioned 27.03.2021 date gets moved to 28.02.2022. It is pointed out by both sides that the captioned application has been taken out only by way of abundant caution and attention of this Court is drawn to proceedings of learned Arbitrator dated 04.06.2022, a scanned reproduction is as follows:



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**BEFORE THE HON'BLE ARBITRAL TRIBUNAL COMPRISING OF
MR. N.L. RAJAH, SENIOR ADVOCATE
SOLE ARBITRATOR**

O.P. No. 350 of 2020
UNDER THE ARBITRATION AND CONCILIATION ACT, 1996:

M/s. OSI Digital Pvt. Ltd.,

-Vs-

... Claimant

M/s. SIFY Technologies Ltd.

... Respondent

APPEARANCE:

For the Claimant:

1. Mr. Dhandayuthapani, D.A. - Claimant
2. Mr. Sravan Unnam, Advocate
3. Ms. Tanvi S., Advocate
4. Mr. Karthick Viewanath, Advocate

For the Respondent:

1. Mr. Madhan Babu, Advocate
2. Ms. Sunrun Srinivasan, Advocate
3. Mr. Mohanraj, Respondent
4. Mr. Athmananda Perumal, Respondent
5. Ms. Osuri, Respondent
6. Ms. Subashri, Respondent

**MINUTES OF THE (11TH) SITTING HELD AT 10.30 AM ON 04.06.2022
AT NANI PALKHIVALA ARBITRATION CENTRE, MYLAPORE, CHENNAI-4**

1. The Claimant Mr. Dhandayuthapani was present and was examined as CW1.
2. The Cross examination will continue on 19.06.2022 at 10.30 AM at NPAC.
3. The list of documents in response to interrogatories is taken on file in the following order.

- Ex. AS0: response to interrogatory no. 4
- Ex. AS1: response to interrogatory no. 5
- Ex. AS2: response to interrogatory no. 6
- Ex. AS3: response to interrogatory no. 13
- Ex. AS4: response to interrogatory no. 14
- Ex. AS5: response to interrogatory no. 21
- Ex. AS6: response to interrogatory no. 26



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Both parties agree to the documents stated above being taken on record in the above manner.

4. The present proceedings, the statement of defense is filed on 13th March 2021. By application of Sec. 29 (A), the proceedings ought to have been completed by 13th March, 2022, however the owing to the Covid Pandemic, the Supreme court of India, in M.A. No. 21/2022 in M.A. No. 665/2021 in SMW No. (C) 3 /2020 has passed an order on 10.01.2022. In the said order, it has been stated

"it is further clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period prescribed under Sec. 23 (4) and Sec. 29 A of the Arbitration Conciliation Act, 1996....."

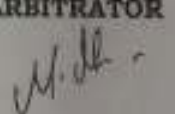
5. It is therefore clear that the present proceedings are within the time. However the appointment of the Arbitrator is pursuant to the order dated 01.10.2020 in O.P. 350/2020 both parties agree that as a measure of abundant caution, they would file an appropriate application in the High court appraising the High Court of the above and will ensure that the necessary orders will be produced before this Hon'ble Tribunal expeditiously.

Dated at Chennai, this 4th day of June, 2022.

**MR. N.L. RAJAH
SOLE ARBITRATOR**


Counsel for Claimant

Received copy


Counsel for Respondent



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6. This Court is also informed that the learned Arbitrator had a sitting yesterday (17.08.2022) and proceedings (cross-examination of the witnesses) happened yesterday. Learned counsel for applicant requests for a short accommodation to place the minutes of the meeting/sitting of learned Arbitrator dated 17.08.2022.

7. To be noted, learned counsel for respondent submits that the respondent is not filing a counter affidavit and respondent is joining the applicant in the prayer qua captioned application. This submission is recorded.

In the light of the request by counsel for applicant, list on Tuesday. List on 23.08.2022.'

3. To be noted, short forms, abbreviations and short references used in the earlier proceedings shall continue to be used in the instant order for the sake of convenience and clarity.

4. Adverting to paragraph No.6 of earlier proceedings, learned counsel for applicant submits that the proceedings of learned Arbitrator dated 17.08.2022 (Minutes of Twelfth sitting) has since been placed before this Court and a scanned reproduction of the same is as follows:



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BEFORE THE HON'BLE ARBITRAL TRIBUNAL COMPRISING OF
MR. N.L. RAJAH, SENIOR ADVOCATE
SOLE ARBITRATOR

O.P. No. 350 of 2020

UNDER THE ARBITRATION AND CONCILIATION ACT, 1996

M/s. OSI Digital Pvt. Ltd., Claimant

- Vs -

M/s. SIFY Technologies Ltd. Respondent

APPEARANCES:
For the Claimant:

1. Mr. Sravan Duttam, Advocate
2. Ms. Tanvi S., Advocate
3. Mr. Dhandayuthapani D.A., Claimant
4. Ms. Priya Sudharahan

For the Respondent:

1. Mr. Madhan Babu, Advocate
2. Ms. Simran Srinivasan, Advocate
3. Mr. R.S. Mohanraj, General Manager
4. Ms. Gauri Sood, Executive Legal, Representative of Respondent Company
5. Mr. Prakash Haris, Legal Representative of Respondent Company
6. Ms. P.K. Subasri, Legal Representative of Respondent Company

MINUTES OF THE TWELTH SITTING HELD AT 05.00 PM ON 17.08.2022 AT NANI PALKHIVALA ARBITRATION CENTRE, NYLAPORE, CHENNAI-4

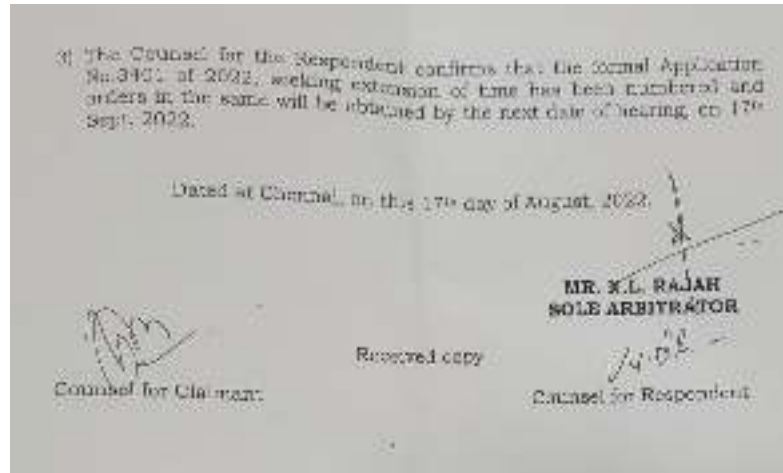
- 1] The Claimant, Mr. Dhandayuthapani was present and the cross-examination continued. The cross-examination was however not completed and will be resumed on 17th Sept. 2022, at 10.30 A.M. at Nani Palkhivala Arbitration Centre.
- 2] The Claimant has filed Ex.A1 to A56 and said documents were taken on record and the Respondents had filed Ex.R1 to R23. The parties have agreed to prepare an agreed set of documents to enable further cross-examination. The same will be produced at the next hearing, on 17th Sept. 2022.



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5. Aforementioned proceedings makes it clear that learned Arbitrator is also clear in his mind that the mandate has not snapped (terminated) under sub-section (4) of Section 29A of A and C Act qua time line under sub-section (1) of Section 29A of A and C Act. In this regard, the time line, trajectory and dates captured in paragraph No.5 of proceedings made in the previous listing is of significance. This by itself drops the curtain on the captioned application. In other words, 12 months period vide sub-section (1) of Section 29A of A and C Act has not elapsed and the same will elapse only on 27.02.2023. This also means that if it becomes necessary, it will be open to the parties to extend this period by six months therefrom by resorting to enabling provision in this regard i.e., sub-section (3) of Section 29A of A and C Act.



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6. Captioned application is disposed of as closed making a simple observation that the arbitral proceedings before AT i.e., sole Arbitrator will continue and be carried to its logical end. There shall be no order as to costs.

23.08.2022

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