



Arb.O.P.(Com.Div.) No.275 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.275 of 2023

M/s.Jayaprakash Agencies,
Represented by its Sole Proprietor
D.Jayaprakash

... Petitioner

Vs.

M/s.Greenstar Fertilizers Limited,
Represented by its Managing Director
SPIC House,
No.88, Anna Salai (Mount Road),
Guindy, Chennai - 600 032.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to resolve the dispute between the parties arising out of the Agreement dated 05.01.2012.

For Petitioner : Mr.Dhanaram Ramachandran

For Respondent : Ms.L.Angelin Philo
for M/s.AAV Partners



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ORDER

This petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointing an arbitrator in respect of a dispute between the petitioner and the respondent under a Dealership Agreement dated 05.01.2012.

2. The learned Counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in **Cognizance for extension of limitation, In Re**, 2022 (3) SCC 117. It is submitted that the period between 15.03.2020 up to 28.02.2022 has to be excluded for computing limitation in the light of paragraph no.5 of the said decision of the Hon'ble Supreme Court.

3. That apart, it is submitted that the limitation is a mixed question of fact and law and as per the decision of the Hon'ble Supreme Court in **M/s.Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coal Field Limited** in SLP(C).No.11476 of 2018 dated 27.11.2019. All issues relating to limitation has to be decided by the arbitrator as a preliminary issue under Section 16 of the Arbitration and Conciliation Act, 1996.



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4. On the other hand, the learned Counsel for the respondent would submit that the decision of the Hon'ble Supreme Court in **Cognizance for extension of limitation, In Re**, 2022 (3) SCC 117, will not apply as it applies only where the limitation had expired during the period between 15.03.2020 and 28.02.2022, whereas, in this case, the limitation expired on 24.07.2022 and therefore, the question of appointing an arbitrator beyond the period of limitation to resolve the dispute between the parties in respect of the arbitration claim cannot be countenanced.

5. I have considered the arguments advanced by the learned Counsel for the petitioner and the learned Counsel for the respondent.

6. The cause of action for initiating the proceedings commenced on 25.07.2019 when, the respondent terminated the contract by issuing the cheque along with the termination notice. Therefore, the last date for initiating the proceedings would have expired on 24.07.2022. The petitioner has issued notice to the respondent only on 30.01.2023 asking the respondent to consent for appointment of an Arbitrator.



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7. In terms of Section 21 of the Arbitration and Conciliation Act, 1996, in the present case, the arbitration proceedings is deemed to have commenced on 30.01.2023. Under Section 43 of the Arbitration and Conciliation Act, 1996, the Limitation Act, 1963 will apply to arbitrations as it applies to proceedings in Court. Therefore, the petitioner had time up to 24.07.2022 to approach this Court for appointing an Arbitrator. However, the petition was filed by the petitioner only on 16.06.2023.

8. Under Section 43(2) of the Arbitration and Conciliation Act, 1996, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Arbitration and Conciliation Act, 1996.

9. Paragraph 5 from the decision of the Hon'ble Supreme Court in **Cognizance for extension of limitation, In Re**, 2022 (3) SCC 117 reads as under:-

"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA.No.21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 is restored and in



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continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A 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."

10. A reading of the above order indicates that there is no saving of limitation where the period of limitation has expired on 28.02.2022.

11. Therefore, the decision of the Hon'ble Supreme Court in **Cognizance for extension of limitation, In Re**, 2022 (3) SCC 117 will not enure in favour of the petitioner.



Arb.O.P.(Com.Div.) No.275 of 2023

WEB COPY

12. At the same time, the Hon'ble Supreme Court in **M/s.Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coal Field Limited** in SLP(C).No.11476 of 2018 dated 27.11.2019 has held that the limitation is mixed question of fact and law and has to be decided only by the arbitrator.

13. In the above case, Court has also held that the Court while exercising its power under Section 11 of the Arbitration and Conciliation Act, 1996 has to merely look at the clause which allows the parties to resolve the dispute among the parties through arbitration.

14. Considering the above, Court is inclined to appoint **Mrs.K.R.Shantha Kumari, Advocate, Enrollment No.686/2003, (Cell No.9940647735) having office at Women Lawyer's Association, Additional Law Chambers, High Court Building, Chennai - 600 104**, as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* disputes between the parties.



Arb.O.P.(Com.Div.) No.275 of 2023

15. The arbitrator shall decide on the preliminary issue as to the maintainability of the arbitral proceedings in the light of the decision of the Hon'ble Supreme Court in **M/s.Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coal Field Limited** in SLP(C).No.11476 of 2018 dated 27.11.2019.

16. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months from the date of receipt of a copy of this order, without getting influenced by any of the observations made in this order touching on the limitation.

17. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of the parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains ex parte, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.



Arb.O.P.(Com.Div.) No.275 of 2023

WEB COPY

18. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

19. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

09.10.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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WEB COPY



Arb.O.P.(Com.Div.) No.275 of 2023

C.SARAVANAN, J.

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Arb.O.P.(Comm.Div).No.275 of 2023

09.10.2023