

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

ARBITRATION APPLICATION NO: 86 OF 2023

Between:

M/s. Zagson Engineering Ltd, E-33, First Floor, Street No. 06, Abul Fazal Enclave- II,
Shaheen Bagh, Jamia Nagar, New Delhi- 110025

...APPLICANT

AND

M/s. SOKEO Power Pvt. Ltd, #98/10/101, Sokeo House Sai Madhu Towers, Opp.
Cyber Towers Madhupur, Hyderabad, Telangana- 500081

...RESPONDENT

Appeal filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 praying that this Hon'ble Court may be pleased to appoint a sole arbitrator retired district judge, for the purpose of adjudicating the disputes which arose between the Applicant and Respondent in lieu of the Work Order dated 21.12.2015.

Counsel for the Petitioner: Mr. ANUP KOUSHIK KARAVADI

Counsel for the Respondent: Mr. D. NARENDAR NAIK

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

ARBITRATION APPLICATION No.86 of 2023

ORDER:

This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of a sole arbitrator for the purpose of adjudicating the disputes arisen between the applicant and the respondent in pursuance of the Work Order dated 21.12.2015.

2. The matter was heard for a considerable length of time.
3. Learned counsel for the respondent by placing reliance on the decision of the Supreme Court in **B and T AG v. MINISTRY OF DEFENCE**¹ referred to paras 54 to 56 and submitted that the instant arbitration application was filed beyond three years from the date of cause of action and has taken preliminary objection to the maintainability of the instant arbitration application. He contended that the application is clearly barred by limitation.
4. A calculation memo is filed by the learned counsel for the respondent computing the period of limitation. It is submitted that even after exclusion of 30 days period after issuance of notice dated 06.06.2017, 114 days, during which time Arbitration Petition No.698 of 2017 was pursued before the High Court of Delhi and 716

¹ 2023 SCC OnLine SC 657

days during Covid period (15.03.2020 to 28.02.2022), there is still delay of 110 days in filing the arbitration application.

5. Learned counsel for the respondent further submitted that the total period of exclusion even as per the admitted case is 30 days + 114 days + 716 days = 860 days; that period of limitation would start from 06.06.2017 and end on 05.06.2020 and after exclusion of 860 days, there is still a delay of 110 days.

6. Learned counsel for the applicant submitted that apart from thirty (30) days of time available for filing of application under Section 11(6) of the Act after issuing notice under Section 21 of the Act, the period consumed for bonafide prosecuting the proceedings before the High Court of Delhi in Arbitration Petition No.698 of 2017, the Covid period and the time consumed for issuance of certified copy of the order of the High Court of Delhi needs to be excluded.

7. Learned counsel for the applicant further submitted that assuming that if there is delay in filing the instant application, the applicant has remedy under Section 43 of the Act to file a condone delay application. The applicant had bonafide prosecuted the application before the High Court of Delhi and as such, the period consumed for prosecuting the application has to be excluded under Section 14 of the Limitation Act. All these details



have not been clearly spelt out in the instant application. Further, if necessary, an application under Section 5 of the Limitation Act read with Section 43 of the Act will be filed. He prays that liberty may be granted to the applicant to withdraw the instant application and institute fresh arbitration application.

8. Learned counsel for the respondent opposed the request made by the learned counsel for the petitioner and submitted that the applicant is always at liberty to invoke the remedies available under law.

9. However, in the facts and circumstances of the case, the applicant is permitted to withdraw the instant arbitration application with liberty to institute fresh arbitration application.

The arbitration application is dismissed as withdrawn granting the liberty sought for. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/- C.V.MALLIKARJUNA VARMA
JOINT REGISTRAR

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SECTION OFFICER

To,

1. One CC to Sri Anup Koushik Karavadi, Advocate [OPUC]
2. One CC to Sri D. Narendar Naik, Advocate [OPUC]
3. Two CD Copies

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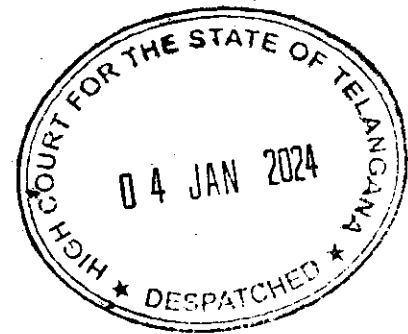
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HIGH COURT

DATED:19/12/2023

ORDER

ARBAPPL.No.86 of 2023



**DISMISSING THE APPLICATION
AS WITHDRAWN**

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