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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 20.12.2023

\+ **OMP (T) COMM. 31/2023**

CAPTAIN SUDHANSHU BHARDWAJ .....Petitioner

Through: Mr. Abinav Sharma and Ms. Avsi Malik, Advs.

versus

AIR INDIA LIMITED ..... Respondent

Through: Mr. Rajesh Ranjan, Mr. Pratyush Singh, Mr. Attin Shankar Rastogi, Mr. Shiv Kant Arora, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

OMP (T) COMM. 31/2023

1. The present petition has been filed under Section 14 (1) read with Section 15 (2) and Section 11 (5) of Arbitration and Conciliation Act, 1996 (the ‘A&C Act’) seeking appointment of a substitute arbitrator.

2. Briefly stated, the facts are that the erstwhile arbitrator withdrew from the arbitration vide order dated 14.05.2018. The present petition has come to be filed on 13.04.2023.

3. The only objection taken by the respondent is that the present petition is barred by limitation.

4. It is the common case of both the parties that the limitation period for filing a petition under the aforementioned sections is three years and

therefore, the limitation period for filing the present petition would have ordinarily expired on 13.05.2021.

5. The petitioner's case is that by virtue of the order/s passed by the Supreme Court in Suo Moto Writ Petition (Civil) No.3/2020, the period from 15.03.2020 till 28.02.2022 is to be excluded for the purpose of calculating limitation and as such, the limitation for filing the present petition would have expired on 01.05.2023. Thus, the present petition is within the period of limitation.

6. Learned counsel for the petitioner has submitted that both on a literal and purposive reading of the order dated 10.01.2022 passed in Suo Moto Writ Petition (Civil) No.3/2020, it is evident that the limitation clock stopped ticking for the petitioner from 15.03.2020 till 28.02.2022. It is submitted that on 15.03.2022, the petitioner had a balance period of 426 days remaining for the purpose of limitation, which period became available to the petitioner with effect from 01.03.2022. It is submitted that the said order dated 10.01.2022 has used the word 'excluded', as such, the excluded period would result in enlargement of time, over and above the prescribed period as held by the Supreme Court in ***Prakash Corporate v. Dee Vee Projects Limited,*** (2022) 5 SCC 112.

7. *Per contra*, learned counsel for the respondent has submitted that a reading of the order dated 10.01.2022 leads to an inevitable conclusion that the limitation period for filing the present petition would have expired on 01.06.2022. It is submitted that the petitioner's case is covered by para 5 (II) & (III) of the order dated 10.01.2022, which governs the cases where the limitation has begun to run prior to 15.03.2020. It is submitted that the limitation period for filing the present petition would have expired on

15.04.2021, therefore, the balance period of limitation remaining on 03.10.2021, as contemplated in para 5 (II) of the order dated 10.01.2022, is nil. Therefore, the petitioner is entitled to a limitation period of 90 days from 01.03.2022 as contemplated in para 5 (III) of the order dated 10.01.2022. As such, the limitation period for filing the present petition would have expired on 01.06.2022. It is submitted that if the argument of the petitioner is accepted that the period between 15.03.2020 to 28.02.2022 is not to be counted at all, then clause 5 (III) will become redundant as no limitation period would expire between 15.03.2020 to 28.02.2022. It is submitted that the order dated 10.01.2022 passed by the Supreme Court contemplates two eventualities:- (i) that 90 days from 28.03.2022 will be made available to all the litigants whose limitation has expired between 15.03.2020 to 28.02.2022; (ii) if balance period of limitation as on 03.10.2021 is more than 90 days than the higher period will be available to the parties reckoned from 01.03.2022. It is submitted that the judgment of ***Prakash Corporate*** (supra) is clearly not applicable to the facts of the present case inasmuch as the said was governed by para 5 (I) of the order dated 10.01.2022 whereas the present petition is governed by para 5 (II) and (III) of the order dated 10.01.2022.

Analysis and Conclusion

8. I having heard the learned counsel for the parties and having perused the record, I find no merit in the contention raised by the respondent.

9. Para 5 of the order dated 10.01.2022 reads as under :-

> *"5. Taking into consideration the arguments advanced by 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 M.A. No.21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 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.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 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."

10. The said order clearly directs that the period from 15.03.2020 till 28.02.2022 shall stand 'excluded' for the purposes of limitation. The Supreme Court in ***Prakash Corporates*** (supra) has held that the effect of this stipulation is that exclusion of the said period**,** a necessary consequence, results in corresponding enlargement of time, over and above the period prescribed. The relevant extract of the judgment is as under :-

"28... A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has

been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."

11. It was further held that legal effect and coverage of the orders passed by the Supreme Court, extending the period of limitation, cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions. The relevant extract of the judgment is as under :-

> "**27.7.** *We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions."*

12. Thus, the entire period from 15.03.2020 to 28.02.2022 is required to be excluded in computing the period of limitation. It follows that the period of limitation would stop running on 15.03.2020 and would start running again on 01.03.2022. Consequently, the balance period of limitation remaining as on 03.10.2021 as contemplated in para 5 (II) would be the same as balance period of limitation remaining as on 15.03.2020.

13. It is incongruous to suggest that while the period from 03.10.2021 to 28.02.2022 is to be excluded for the purpose of calculating period of limitation, the same is not to be done for the period from 15.03.2020 to 02.10.2021. Doing so would be inconsistent with the plain language of para 5 (I) of the order dated 10.01.2022.

14. The order dated 10.01.2022 cannot be construed to reach the conclusion that limitation continues to run till 04.10.2021 but will stop running during the period 03.10.2021 till 28.03.2022. This would be contrary not only to the purport of the order dated 10.01.2022 but also to the expressed language of para 5 (I) of the said order dated 10.01.2022.

15. There is no merit in the contention of the respondent that above interpretation would render para 5 (III) of the order dated 10.01.2022 redundant. Para 5 (III) provides that where the limitation would have in normal circumstances expired between 15.03.2020 till 28.02.2022, the litigant is entitled to balance period of limitation remaining with effect from 01.03.2022 and if the balance period of limitation is less than 90 days then the litigant shall have a limitation period of 90 days from 01.03.2022. The purport of para 5 (III) is, thus, clearly to ensure that the litigant will be entitled to the greater of:- (i) balance period of limitation remaining with effect from 01.03.2022; (ii) a period of 90 days from 01.03.2022.

16. The judgment of ***Tricolor Hotels Limited and Ors. v. Dinesh Jain and Ors.***, (2023) 297 DLT 628, relied upon by the respondent, is not applicable to the facts of the present case. In the said case, an application under Section 15 of A&C Act was filed on 01.08.2018, while the limitation period for filing the same had expired on 26.07.2018; the Court refused to condone the delay of 05 days in filing the said application, having found no "sufficient cause" for condoning the delay.

17. In the circumstances, there is no impediment in allowing the present petition.

18. Accordingly, Mr. Ritesh Kumar, Advocate, (Mob. No.: 9891245343) is appointed as the substitute sole arbitrator to adjudicate the disputes between the parties.

19. The learned Sole Arbitrator may proceed with arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A & C Act.

20. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A & C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

21. Parties shall share the arbitrator's fee and arbitral costs, equally.

22. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

23. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the contentions of the parties.

24. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 20, 2023/*hg*