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

Judgment pronounced on: 06.11.2023

+ **O.M.P.(MISC.)(COMM.) 466/2023**

ATC TELECOM INFRASTRUCTURE
PRIVATE LIMITED

..... Petitioner

Through: Mr. Piyush Sharma, Mr. Aditya N.
Prasad, Mr. Subhoday Banerjee and
Mr. Nishank Bhardwaj, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED

..... Respondent

Through: Ms. Leena Tuteja and Ms. Ishita
Kadyan, Advs.

+ **O.M.P.(MISC.)(COMM.) 467/2023**

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Kadyan, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

O.M.P.(MISC.)(COMM.) 466/2023

O.M.P.(MISC.)(COMM.) 467/2023

1. The present petitions under Section 29A(4) of the Arbitration and



Conciliation Act, 1996 (the 'A&C Act') have been filed seeking extension of time for completion of arbitral proceedings and making of the arbitral award.

2. O.M.P.(MISC.)(COMM.) 467/2023 has been filed in the backdrop of the arbitral proceedings before a learned Sole Arbitrator appointed by this Court vide order dated 19.05.2021 in Arb.P. No. 527/2021 (first reference).

3. In respect of the same Contract between the parties, another order dated 27.05.2022 came to be passed by this Court in Arb.P. No. 660/2022 for the purpose of adjudication of the additional disputes that arose between the parties (second reference). The arbitral proceedings conducted pursuant to the said order dated 27.05.2022 are the subject matter of O.M.P.(MISC.)(COMM.) 466/2023.

4. Admittedly, the aforesaid arbitral proceedings are at an advanced stage. It is undisputed that the learned sole Arbitrator has acted with expedition and despatch in the conduct of arbitration proceedings. Reference may also be apposite to the order dated 18.09.2023 passed by the learned Sole Arbitrator which reads as under:-

"1) The matters have come up today for further cross examination of CW 1. Both counsel submitted that the time extended under Section 29A (3) of the Arbitration and Conciliation Act, 1996, has expired on 28.8.2023 in the first reference and will be expiring on 29.9.2023 in the second reference. They submitted that due to oversight, this was not brought to the notice of the Tribunal and both proceeded on the bonafide basis that the time was available till 29.9.2023.

*2) **Both sides agreed that the Claimant will file necessary application under Section 29A (4) of the A&C Act within ten days and the Respondent will give its consent for extension.***

3) In view of the above, the parties requested that the hearing fixed today may be adjourned.

4) The learned counsel for the Claimant stated that he is not available between 5th to 12th October, 2023. The learned Senior Counsel is not available from 19th October to 22nd November, 2023.



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5) Taking into consideration the convenience of parties, the next hearing is fixed on 17.10.2023 at 5.15 p.m. (through video conference) for further cross examination of CW1. The witness shall answer the questions 44, 45, 52, 54, 59 and 61 on that day.”

5. The time period for completion of arbitral proceedings in the first reference expired on 28.08.2023 whereas the present petition [O.M.P.(MISC.)(COMM.) 467/2023] under Section 29A of the A&C Act came to be filed on 26.09.2023. The time period for completion of arbitral proceedings qua the second reference expired on 29.09.2023 whereas the present petition [O.M.P.(MISC.)(COMM.) 466/2023] under Section 29A of the A&C Act seeking extension of time for completion of arbitral proceedings came to be filed on 26.09.2023.

6. Although, the aforesaid order dated 18.09.2023 passed by the learned sole Arbitrator records the consent of the parties with regard to filing of requisite applications under Section 29A(4) of the A&C Act qua both the references, for the purpose of taking appropriate extension for completion of arbitral proceedings and making of the arbitral award, learned counsel for the respondent, nonetheless, objects to O.M.P.(MISC.)(COMM.) 467/2023 on the ground that the said petition came to be filed after the time period for completion of arbitral proceedings had already expired.

7. Learned counsel for the respondent contends that the mandate of the learned sole Arbitrator (in the first reference) having already expired on 28.08.2023, this court has no jurisdiction to entertain the petition under Section 29A(4) of the A&C Act which was filed after such expiration. In support of this contention, learned counsel for the respondent relies upon a judgment of the Calcutta High Court in ***Rohan Builders (India) (P) Ltd. v.***



Berger Paints India Ltd., 2023 SCC OnLine Cal 2645.

8. The relevant statutory provision in the context of which the above submission of the learned counsel for the respondent is to be considered is reproduced hereunder:-

“29A. Time limit for arbitral award.—

(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.”



9. The issue as to whether this Court has jurisdiction to entertain a petition under Section 29A(4) after expiration of the period under Section 29A(1) and/or 29A(3) of the A&C Act has been the subject matter of prior consideration by this Court. In the regard, reference is apposite to the judgement of this court in **Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project**, 2023 SCC OnLine Del 2990, wherein it has been specifically held as under:-

“23. Mr. Shukla advanced an equally untenable argument, when he suggested that the power under Section 29A(4) of the Act cannot be exercised on an application made after the expiry of the mandate of the arbitral tribunal. The provision clearly provides that the Court may extend the period even after its expiry. Indeed, the second proviso provides that the mandate of the tribunal would continue until the disposal of such a petition. I see no justification in the text of the statute, or on a purposive interpretation thereof, to hold that the power can only be exercised on an application filed prior to the expiry of the mandate.”

10. Likewise, the Kerala High Court in **Hiran Valiyakkil Lal v. Vineeth M.V.**, 2023 SCC Online Ker 5151, has held as under:-

“12. According to Sri. Shaji, the mandate of the Arbitrator can be extended by Court under sub-section (4) only in cases where the period for passing the award by the arbitral tribunal is extended for a period not exceeding six months by the parties, by consent, as provided under subsection (3). I cannot agree to this argument. Sub-section (4) of Section 29A deals with cases where the award is not made within a period of twelve months from the date of the completion of the pleadings and it provides that, if the award is not made within the period specified in sub-section (1), the mandate of the Arbitrator shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. The said sub-section with the use of the conjunction ‘or’ also applies in cases where the award is not made within the extended period not exceeding six months specified in sub-section (3). It is not as if it applies only to cases where the period is extended under sub-section (3). In the case at hand, the period of twelve months from the date of the completion of the pleadings within which time the Arbitrator has to make an award is not extended by the parties, by consent. Therefore, the mandate of the Arbitrator stands terminated on expiry of the period of



twelve months from the date of completion of pleadings. However, the sub-section (4) provides that the Court is empowered to extend the period for making the award either prior to or after the expiry of the said period. Sub-section (5) provides that such extension of period may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. Subject to the above, the time limit specified for arbitral award can be extended by Court.

13. On going through Ext. P2 proceedings before the Arbitrator, I note that the evidence in the arbitration has been completed and the final hearing has commenced and the proceedings got delayed not for reasons attributable to the Arbitrator, but due to various interlocutory applications the arbitral tribunal was called upon to consider, the adjournments sought for by parties and the situation brought out by Covid-19 pandemic. It is also not disputed by the respondents/claimants that the learned Arbitrator also requested the parties to approach the Court for extension of the time for completion of the arbitration. This Court, therefore, finds sufficient cause, to extend the period for making the arbitral award. Accordingly, the mandate of the Arbitrator is revived and extended from 01.04.2023 till 30.09.2023. The parties shall cooperate with the learned Arbitrator to complete the proceedings.”

11. Again, this Court in **Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.**, 2023 SCC OnLine Del 4894, has held as under:-

“39. In any event, in terms of Section 29A (4) and (5) of the Act, the mandate of the Arbitrator can be extended by the Court even after expiry of the time for making of the arbitral award on sufficient cause being shown by the party making the application.”

12. *Per contra*, the Calcutta High Court in **Rohan Builders** (supra) has taken a view that if an arbitral award is not rendered within the timeline contemplated under Section 29A(1) and/or Section 29A(3) of the A&C Act, the mandate of the arbitral tribunal stands terminated and that after such termination of the mandate, it is no longer possible to entertain a petition under Section 29A(4) of the A&C Act. As such, it is incumbent for the parties to file a petition under Section 29A(4) of the A&C Act prior to the



expiry of the mandate of the arbitral tribunal and that it is no longer possible to seek an extension of the mandate after expiry thereof.

13. A perusal of the judgment of the Calcutta High Court in ***Rohan Builders (supra)***, reveals that the following aspects weighed with the Court in that case:-

- i. Unlike Section 28 of the Arbitration Act, 1940, Section 29A of the A&C Act contemplates strict timelines for making of the arbitral award and also introduces the concept of termination of mandate if the award is not made within the prescribed statutory timelines.[para 23 of Rohan Builders (supra)]
- ii. Taking note of the 176th Report of the Law Commission of India on the Arbitration and Conciliation (Amendment) Bill, 2001, it was held that whereas the recommendation of the Law Commission contemplated “suspension” of mandate after expiry of the period for completion of the arbitral proceedings, the statutory provision as engrafted in the statutory provision, as enacted, provides for “termination” of the mandate of the Arbitrator(s). The conclusion is therefore drawn that upon expiry of the timelines prescribed under Section 29A(1) and/or 29A(3) of the A&C Act, the mandate of the arbitral tribunal stands terminated and not merely suspended and that after expiry of such mandate, it is no longer possible to seek extension under Section 29A(4) of the A&C Act. [para 31 of Rohan Builders (supra)]
- iii. A court can extend the period of time for completion of the arbitral proceedings and making of the arbitral award only when the mandate of arbitrator is subsisting and not thereafter. [para 38 of Rohan



Builders (supra)]

- iv. If the framers intended that the application for extension could be made at any time after expiry of the mandate, Section 29A(4) of the A&C Act, the same would not have used the expression “terminate” but “revive” or “renew”. [para 44 of Rohan Builders (supra)]
- v. Finally, the court found that the above interpretation is the only plausible interpretation of Section 29A(4) of the A&C Act inasmuch as any other interpretation would make the timelines for making an arbitral award inconsequential, thereby, defeating the object of Section 29A of the A&C Act itself viz. to expedite the conduct of arbitral proceedings. [para 55 of Rohan Builders (supra)]

14. The judgment of this Court in *Wadia Techno-Engineering Services* (supra) was sought to be distinguished in *Rohan Builders* (supra) by observing that *Wadia Techno-Engineering Services* (supra) “did not involve any issue on the significance of the word extend/extension/extending as used in section 29-A.”

15. Having carefully considered the judgment of the Calcutta High Court in *Rohan Builders* (supra), I am unable to concur with the reasoning contained therein and the conclusion drawn in the said judgment. The reasons are enumerated hereunder.

16. No doubt, the purpose of Section 29A of the A&C Act is to prescribe and regulate the timelines for completion of the arbitral proceedings; however, a perusal of Section 29A of the A&C Act itself makes it clear that it does not contemplate any inflexible outer deadline for completion of arbitral proceedings, and affords flexibility to the contracting parties, and also to the Court for extension of the time period in appropriate cases. The



purport of Section 29A of the A&C Act was clearly not to tie the hands of the parties or the court, and prevent extension of time even where warranted, simply because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiration of the deadline contemplated under Section 29A(1) or Section 29A(3) of the A&C Act. Had it been intended by the legislature to provide for a blanket prohibition on extension of time after the expiration of the period contemplated under Section 29A(1) or Section 29A(3) of the A&C Act (unless a petition under Section 29A(4) of the A&C Act was filed prior to expiry of the said period), nothing would have been easier than to say so.

17. The 176th Report of the Law Commission of India on the Arbitration and Conciliation (Amendment) Bill, 2001 [which is copiously referred to in ***Rohan Builders*** (supra)], contemplates a statutory regime which is structurally quite different from the statutory provisions, that came to be actually engrafted, and therefore, it may not be appropriate to refer to selective portions of the Law Commission's report to interpret the extant provisions, which otherwise do not suffer from any ambiguity. The said report made a series of recommendations, *inter-alia*, providing for (a) time limit for completion of arbitral proceedings; (b) providing time limits even for international arbitrations; (c) making the timelines applicable to pending arbitrations, which have been pending for more than 03 years; (c) making certain timelines applicable for disposal of petitions under Section 34 and 37 of the A&C Act; (d) suspension of arbitral proceedings after expiry of the prescribed outer deadline for completion thereof; and revival thereof upon an application being filed in Court for extension of time.

18. In the opinion of this Court, it would not be apposite to selectively



focus on one aspect of the report of the Law Commission [viz. suspension of arbitral proceedings] and to draw a conclusion that since Section 29A(4) of the A&C Act, as actually engrafted does not contemplate any ‘suspension’ but rather ‘termination’ of mandate upon expiry of the prescribed timeline, it would, therefore, no longer be possible for any extension to be granted after expiry of the prescribed period, even with the consent of the parties. To so conclude would tantamount to overlooking/nullifying the conscious departure in the statutory provisions as actually framed, *vis-à-vis* the recommendation/s of the Law Commission.

19. The Supreme Court has taken the view in a number of cases that although the recommendation/s of the Law Commission or Parliamentary Standing Committees afford extrinsic guidance for interpretation of statutory provisions in certain situations, there are also limitations on such reliance. In ***Jaishri Laxmanrao Patil v. State of Maharashtra***, (2021) 8 SCC 1, in the concurring judgment of L. Nageswara Rao, J., it has been observed as under:-

“212. The exclusionary rule by which the historical facts of legislation were not taken into account for the purpose of interpreting a legislation was given a decent burial by the House of Lords in Pepper (Inspector of Taxes) v. Hart [Pepper (Inspector of Taxes) v. Hart, 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL)] . In Kalpana Mehta v. Union of India [Kalpana Mehta v. Union of India, (2018) 7 SCC 1] , a five-Judge Bench of this Court held that the Parliamentary Standing Committee report can be taken as an aid for the purpose of interpretation of a statutory provision. Wherever the reliance on such reports is necessary, they can be used for assisting the court in gathering historical facts. In accord with the said judgment, the deliberations of the report of the Select Committee can be utilised as an extrinsic aid for interpretation of Article 342-A, in case there is any ambiguity in the provision.

213. In R. v. Director of Public Prosecutions, ex p Duckenfield [R. v. Director of Public Prosecutions, ex p Duckenfield, (2000) 1 WLR 55 : (1999) 2 All ER 873] , Laws, C.J., cautioned about the great dangers in



treating Government pronouncements, however, helpful, as an aid to statutory construction. In Black-Clawson International Ltd. [Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg AG, 1975 AC 591 : (1975) 2 WLR 513] taking the opinion of a minister, or an official or a committee, as to the intended meaning in particular application of a clause or a phrase was held to be stunting of the law and not a healthy development. The crucial consideration when dealing with enacting historical materials is the possibility that Parliament changed its mind, or for some reason departed from it [Assam Railways & Trading Co. Ltd. v. IRC, 1935 AC 445 (HL)] . In Letang v. Cooper [Letang v. Cooper, (1965) 1 QB 232 : (1964) 3 WLR 573 (CA)] it was held that enacting history must be inspected with great care and caution. As an indication of legislative intention, it is very far behind the actual words of the Act.

214. While setting out the relevant portions of the report of the Select Committee, Ravindra Bhat, J. pointed out that the report reflected the opinions of both sides before concluding that the concern of the States will be considered in accordance with the procedure under Article 341 and Article 342. There is no doubt that the Minister was assuaging the concerns of the Members by stating that the power of the States to identify backward classes is not being disturbed. I am convinced that there is no reason to depart from the text which is in clear terms and rely upon the legislative history to construe Article 342-A contrary to the language. I am not persuaded to agree with the submissions of the learned Attorney General and the other counsel for the States that Article 342-A has to be interpreted in light of the Select Committee Report and discussion in Parliament, especially when the legislative language is clear and unambiguous.”

The Constitution Bench in ***Jaishri Laxmanrao Patil*** (supra), speaking through S. Ravindra Bhat, J., also held as under:

“VIII. Extrinsic aids to interpretation of statutes : The extent to which they can be relied upon

...

111. There cannot be a disagreement with the proposition that where the provisions of the statute or its wordings are ambiguous, the first attempt should be to find meaning, through internal aids, in the statute itself. Failing this, it is open to the court to find meaning, and resolve the ambiguity, by turning to external aids, which include the Statements of Objects and Reasons, as well as parliamentary reports, or debates in Parliament. To this Court, it appears that the task of interpreting the



provisions of the 102nd Amendment does not begin by relying on external aids such as Statement of Objects and Reasons (which throw practically no light on the meaning of the provisions), or even the Select Committee Report. The task of interpretation is first to consider the overall scheme of the provisions, and secondly, after considering the provision, proceed to resolve any perceived ambiguity, if found, by resorting to aids within the statute. It is at the third stage, when such resolution is impossible, that external aids are to be looked into...

It is also apposite to refer the judgment of the Court of Appeal in ***Letang v. Cooper.***, [1965] 1 Q.B. 232, cited by the Constitution Bench in ***Jaishri Laxmanrao Patil*** (supra), wherein it has been held as under:-

“It is legitimate to look at the report of such a committee, so as to see what was the mischief at which the Act was directed. You can get the facts and surrounding circumstances from the report so as to see the background against which the legislation was enacted. This is always a great help in interpreting it. But you cannot look at what the committee recommended, or at least, if you do look at it, you should not be unduly influenced by it. It does not help you much, for the simple reason that Parliament may, and often does, decide to do something different to cure the mischief. You must interpret the words of Parliament as they stand, without too much regard to the recommendations of the committee: see Assam Railways and Trading Co. Ltd. v. Commissioners of Inland Revenue.”

20. In ***Mobarik Ali Ahmed v. State of Bombay***, 1958 SCR 328, a three-judge Bench of the Supreme Court has held as under:-

“31. Learned counsel invited our attention to a passage from the report of the Indian Law Commissioners quoted at p. 274 of Ratanlal Law of Crimes (Eighteenth Edn.). It is enough to say that though this quotation may be valuable as a matter of history, it cannot be a legitimate guide for the construction of the section. That construction must be based on the meaning of the words used, to be gathered according to the ordinary rules of interpretation and in consonance with the generally accepted principles of exercise of criminal jurisdiction.”

21. The pitfalls of placing overt reliance upon the report/s of the Law Commission in interpreting statutory provisions has been highlighted by a five-judge Bench of the Calcutta High Court itself in ***Ratanlal Bansilal v.***



Kishorilal Goenka, AIR 1993 Cal 144 (FB). It was, *inter-alia*, observed therein as under:-

“40. This observation means that the Report is an external aid for comprehending a law enacted where it is the source of the legislative initiative. But the Law Commission's Report cannot be the last word. The ultimate source is the legislative intent and how far there is a fusion of the two. But the report is an aid, its importance depending on other related circumstances. However, it can by no means be the matrix of what is finally enacted and its words final. Such reference is in the best tradition only where the legislature's intention is ouscure.

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45. As we have said, some caution is well advised against being carried away by such external sources. After all, such reports are mere expression of opinions which may not always go into the object of the enactment. They may be discarded to the extent they are ambiguous or obscure or inconsistent with the entirety of the legislative scheme. Here we have to discern how far the recommendations influenced the law-makers in amending the provision.”

22. Unlike the recommendation in the 176th report of the Law Commission, the statutory provision, as actually engrafted, specifically provides that “the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period”.

23. Thus, under Section 29A(4) of the A&C Act, the termination of the mandate of the arbitrator(s) is subject to the decision of the Court which may be “either prior or after the expiry” of the specified period. The Court would take a suitable decision upon a petition under Section 29A(4) of the A&C Act being filed. Such a petition can be filed either before expiry of the period referred to under Section 29A(1) or Section 29A(3) of the A&C Act or even thereafter. When the Court has been specifically empowered to grant the requisite extension even after expiry of the specified period, it would not be apposite to read a proscription in the statutory provision to the effect that



a petition under Section 29A(4) of the A&C Act [seeking extension of time] must be filed before expiry of the specified period and not thereafter. Such a proscription simply does not exist in the statute. On the contrary, as already noticed, the court has been empowered to grant an extension even after expiry of the specified period.

24. Even according to **Rohan Builders** (supra), as long as a petition under Section 29A(4) of the A&C Act is filed before the expiry of the time period referred to in Section 29A(1) or Section 29A(3) of the A&C Act, it is permissible for the Court to grant the extension of time even after expiry of the specified time period. This undermines the reasoning in **Rohan Builders** (supra) itself inasmuch as according to the said judgment, once the mandate of arbitral tribunal “terminates” upon expiry of the specified period, the same cannot be “extended” in the absence of a statutory provision for “revival” or “renewal” of the mandate.

25. The facts of the present case also illustrate that the dictum laid down in **Rohan Builders** (supra) can potentially thwart, rather than subserve the legislative intent. In the present case, there is no controversy that the learned sole Arbitrator has conducted the arbitral proceedings with expedition and despatch, and that there is ample justification for extending the time period for completion of arbitral proceedings and making of the arbitral award. The order dated 18.09.2023 passed by the learned sole Arbitrator even records the consent of the parties in this regard. To deny extension of time in such a case, only because the petition under Section 29A(4) of the A&C Act came to be filed a few days after expiry of the period set out in Section 29A(3) of the A&C Act besides being in the teeth of the language of Section 29A(4) of the A&C Act, seriously undermines the efficacy of the arbitral process and



also impinges on party autonomy. Any interpretative exercise must therefore avoid this consequence.

26. For all the above reasons, I am in respectful disagreement with the judgment of *Rohan Builders* (supra). I am also bound by the view taken by a Co-ordinate bench of this Court in *Wadia Techno-Engineering Services* (supra).

27. In the facts and circumstances of the present case, I find no impediment in granting a suitable extension of time for completion of the arbitral proceedings and making of the arbitral award in respect of the first reference which is the subject matter of O.M.P.(MISC.)(COMM.) 467/2023

28. As far as the arbitral proceedings which are subject matter of O.M.P.(MISC.)(COMM.) 466/2023 is concerned, the said petition under Section 29A(4) of the A&C Act came to be filed before expiration of the time period contemplated under Section 29A(1) of the A&C Act for completion of the arbitral proceedings and making of arbitral award. As such, even according to the respondent itself, there is no impediment in granting suitable extension of time for completion of arbitral proceedings and making of the arbitral award.

29. Consequently, the time period for making of the arbitral award in arbitration proceedings which are subject matter of O.M.P.(MISC.)(COMM.) 466/2023 and O.M.P.(MISC.)(COMM.) 467/2023, is extended till 28.08.2024, as prayed for.

30. The present petitions stand allowed in the above terms.

SACHIN DATTA, J.

NOVEMBER 06, 2023/r/hg