



WEB COPY



A.No.1324, 2195 & 2196 of 20

A.Nos.1324, 2195 & 2196 of 2024

**RESERVED ON
14.08.2024**

**PRONOUNCED ON
03.09.2024**

K.KUMARESH BABU, J.

Since the parties to these applications are one and the same, the prayer sought for in these applications are all for extension of mandate of the Arbitration Proceedings, with the consent of the parties appearing on either side, the applications were taken up together.

2. Heard Mr.K.Balamurali, learned counsel for M/s.Shivakumar and Suresh, learned counsel for the applicant and Mr.Althaf M. Hussain, learned counsel for the respondent in all the applications.

3. The learned counsel for the applicant would submit that the mandate as provided under Section 29(A) of the Arbitration and Conciliation Act, 1996 had expired on 05.08.2023, the first respondent had refused to grant his consent in extension for madate. In the meantime, a Company Petition came to be filed against the applicant before the NCLT which had been admitted and one Kathiraesavan Nachimuthu was appointed as an Interim Resolution Professional and a public notice was also published on 11.08.2023. The applicant had entered into a settlement

<https://www.mhc.tn.gov.in/judis>



WEB COPY

Agreement with the creditor on 14.08.2023 and vide a order dated 21.09.2023, the Company Petition was permitted to be withdrawn and the Interim Resolution Professional was also terminated. Only thereafter, the Board of Directors of the Corporate Director of the applicant company was restored. Immediately thereafter, an application seeking to extend the mandate was sought to be filed and the same was prepared in the month of October 2023. But, for the reasons beyond the control, the same came to be filed before the Registry in the month of March 2024. He would submit that the delay in approaching this Court is neither wilfull nor wanton but for the bonafide reasons of miscommunication between the applicant and it's counsel. He would reiterate that the affidavit for filing the application had been signed and affirmed on 30.10.2023. He would seek this Court to extend the mandate to the Arbitrator to conclude the proceedings.

4. However, the learned counsel appearing on behalf of the respondent would vehemently oppose for grant of extension of mandate. He would contended that in March 2022, the sole Arbitrator was appointed and the pleadings were all completed on 05.08.2022. He would also contend that the time period for completion of the proceedings would be 05.08.2023. The Arbitrator had sent a mail on 03.08.2023 seeking the parties mutual consent for extension mandate. The respondent by his



communication dated 05.08.2023 had refused to accept the mandate.

Therefore, from 06.08.2023, the sole Arbitrator had become *functus officio*

Therefore, there is no question of extending the mandate. He would further contend that even though for a period of a month, the applicant Company was under the preview of the NCLT, the same was dismissed as withdrawn by the NCLT on 21.09.2023 and therefore, there was no impediment in them to have approached this Court immediately thereafter. However, the application had been filed only in the month of March 2024 i.e. nearly after a period of four (4) months and no reasons have been assigned for the delay in approaching this Court. Hence, he would submit that this Court need not exercise its jurisdiction under Section 29(A) of the Act for grant of extension of the mandate. He would submit that the Arbitration Proceedings were delayed only at the instances of the applicant and there were no delay on part of the respondent in participating in the Arbitration Proceedings. Hence, he would seek this Court not to grant any indulgence by extending the mandate. He would also draw the attention of this Court to the affidavit filed in support of these application wherein he would indicate that the applications were signed in the month of October 2023, but were presented before this Court in the month of March 2024 and this itself would show that the applicant is not interested in concluding the arbitration proceedings and is trying to drag on the proceedings.



WEB COPY

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. Even admitted by the parties, the mandate of the Arbitrator had come to an end on 05.08.2023. The Provisions of the Arbitration and Conciliation Act, 1996 particularly Section 29(A) do not preclude a party from approaching this Court even after the expiry of the mandate for continuing the mandate for a decision to be arrived at by the Arbitrator. From the pleadings filed by the respective parties, it could be seen that the notice under Section 21 had been issued by the applicant to the respondent. Since, he had not responded to the same, the applicant had approached this Court seeking for an appointment of an Arbitrator and an Arbitrator had been appointed on 09.03.2022. Pleadings were completed on 05.08.2022. Further, from the pleadings, particularly the counter statement filed by the respondents, it could be seen that the defence statements had been amended at the request of the respondent by the orders of the Arbitrator on 23.11.2022. The said amendment had also been allowed on payment of costs of Rs 5,000/-. From the said admitted submission, it could be seen that the pleadings in the Arbitration Proceedings had been amended at the instance



WEB COPY

of the respondent. Even though, the parties claim that the pleadings were completed in 05.08.2022, and calculated the period of 12 months from 05.08.2022, in view of the amendment carried out at the instance of the respondent to its defence statement in November 2022, this Court has to also look into the issue as to whether the period of 12 months would commence from 05.08.2022 or 23.11.2022.

7. Be that as it may, without entering into such dispute, considering the fact that the dispute had arisen between the parties pursuant to the work orders of the year 2016 and 2017 and that even the Section 21 notice which was issued in 2020, the respondent had not responded to refer the matter for arbitration, the applicant had approached this Court and got order of appointment of an Arbitrator. Thereafter, the Arbitrator also entered appearance and had commenced the proceedings. From the pleadings as indicated above, there seems to be a delay even on the part of the respondent in seeking to amend its statement of defence. Therefore, the respondent cannot shrug away from the fact that the respondent was also responsible for the delay in the proceedings. Further, the applicant had also got embroiled in an insolvency proceedings before the NCLT and after settling the creditor, the insolvency proceedings have also been permitted



WEB COPY

to be withdrawn by the NCLT. After the disposal of the NCLT proceedings, the functioning of the Board of Directors to the applicant company came to be revived and immediately thereafter, they had also prepared the application but had only filed in the month of March, 2024. This itself would indicate that the applicant had envisaged interest in approaching this Court for extension of mandate. The Provisions of Section 29(A) of the Act, envisages that the mandate could be extended even after the expiry of the period mentioned therein.

8. In such circumstances, I do not find any reasons to refuse to extend the mandate for a further period of six (6) months, ofcourse with a Caveat.

9. In fine, the application is ordered as prayed for and the period of six (6) months is extended from the date of receipt of a copy of this order. On receipt of a copy of this order, the Arbitrator shall fix a schedule which shall be followed by the respective parties. The schedule shall also include the time period within which the parties shall produce their evidence before the Arbitrator and complete their arguments. The Arbitrator is requested to strictly follow the time limit and if any of the party violates the time limit,



WEB COPY



A.No.1324, 2195 & 2196 of 20

the Arbitrator shall proceed to the next step without granting any further extension of time to the respective parties. The Arbitrator shall endeavour to complete the proceedings within a period of six (6) months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Gba

03.09.2024

K.KUMARESH BABU,J.

Gba

A.Nos.1324, 2195 & 2196 of 2024



WEB COPY



A.No.1324, 2195 & 2196 of 20

03.09.2024