



Arb.OP.(Com.Div.).No.482 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.03.2024
Pronounced On	02.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.482 of 2023

M/s.Prithvi Tractors

Rep.by its Partner Veeranna Nidagundi

.. Petitioner

vs.

M/s.Same Deutz-Fahr India Pvt.Ltd.,

Rep.by its Managing Director

.. Respondent

Prayer: Original Petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside impugned Arbitral Award dated 30.01.2021 in Arbitration Case No.6 of 2019 passed by the learned Sole Arbitrator Mr.Jistice K.Chandru, Former Judge, High Court of Madras in its entirety and to direct the respondent to pay the costs.

For Petitioner : Ms.Bhuvaneswari .K
for M/s.Mani Prabhu



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For Respondent : M/s.Vandana
for M/s.Surana and Surana

ORDER

I have considered the arguments advanced by the learned counsel for the petitioner and the leaned counsel for the respondent.

2. This Arbitration Original Petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 by the claimant to set aside the Arbitration Award dated **30.01.2021** in **Arbitration Case No.6 of 2019** passed by the Arbitral Tribunal presided over by a Sole Arbitrator.

3. The unsuccessful claimant before the Arbitral Tribunal is before this Court against the Impugned Award dated **30.01.2021** passed by the Arbitral Tribunal constituted pursuant to Order dated **29.08.2019** in **O.P.No.617 of 2019** of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.



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4. By the impugned Award, Arbitration Award dated **30.01.2021** in **Arbitration Case No.6 of 2019**, the Arbitral Tribunal presided over by a Sole Arbitrator has rejected the claim of the petitioner while allowing cost of Arbitral Tribunal to the petitioner.

5. The dispute between the petitioner (claimant) and the respondent arises under **Ex.C19 - Dealership Agreement** dated **01.01.2011** signed between the petitioner and the respondent before the Arbitral Tribunal.

6. **Ex.C19-Dealership Agreement** dated **01.01.2011** contemplated a clause for resolution of dispute between the parties. The respondent terminated **Ex.C19-Dealership Agreement** dated **01.01.2011** vide **Ex.C29 Termination Notice** dated **18.04.2012**.

7. This led to filing of **Ex.C36 Private Complaint** dated **31.10.2014** being lodged before the JMFC I Court, Hubballi and **Ex.C37 FIR** in **Crime.No.132 of 2014** dated **29.11.2014** by the petitioner(claimant). During the interregnum, there were several exchange of communications



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between the petitioner (claimant) and the respondent.

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8. In the course of the criminal proceedings, charge sheets were filed against the respondent. Ultimately the matter came up before the Dharwad Bench of Karnataka High Court in **Criminal Petition No.100349 of 2015** at the behest of the respondent.

9. Meanwhile, the respondent had nominated Hon'ble Mr.Justice R.Balasubramanian as the Sole Arbitrator vide Ex.C.66 dated 08.11.2017 during the pendency of the above criminal above proceedings.

10. Under these circumstances, the Dharwad Bench of Karnataka High Court initially granted stay and eventually quashed **Ex.C37 FIR in Crime.No.132 of 2014** dated **29.11.2014** as also **Ex.C36 Private Complaint** dated **31.10.2014** vide Ex.C.50 - Order dated **04.11.2016** with the following observations:-

"5. Undisputedly, the dispute between the accused and the complainant are contractual in nature. The dealership has been cancelled. That by itself does not amount to fraud or cheating. In view of the violation of the terms of the contract,



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arbitration has been invoked. The parties are stated to be before Arbitration. Two years thereafter, the instant complaint is filed. I have no hesitations to hold that initiation of the proceedings, lodging of the complaint, etc are nothing but an abuse of process of the Court”.

11. Thereafter, the petitioner filed **I.A.1/2018** before the Dharwad Bench of the Karnataka High Court for condoning the delay of **549 days** in filing the petition to recall the order dated **04.11.2016** passed in **Criminal Petition No.100349 of 2015** to reopen the proceedings since the same was disposed purportedly on a false representation of the respondent. The petitioner also filed **I.A.2/2018** in **Criminal Petition No.100349 of 2015** to recall the order dated **04.11.2016** in **Criminal Petition No.100349 of 2015**.

12. Vide Ex.C92 dated 10.07.2018, the Dharwad Bench of the Karnataka High Court disposed these two applications. The High Court allowed both applications on **10.07.2018** and thus recalled its order dated **4.11.2016** (Ex.C.50).

13. In its order dated **10.7.2018 (Ex.C92)**, the submissions of the



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Respondent's counsel before the Dharwad Bench of the Karnataka High Court was recorded. It reads as follows:-

"On being questioned, Smt. Bharathi G. Bhat learned counsel for Petitioner No.1 contends that Hon'ble Justice R. Balasubramanian, retired Judge of the High Court of Madras was approached to act as an arbitrator. However, in view of the fact that he went to New Delhi for the purpose of practice, arbitration proceedings could not go on"

(As extracted in Para 72 of the I.A.Nos 1 & 2 of 2018.)

14. **Para Nos.73 and 74** of the I.A.Nos 1 & 2 of 2018 reads as under : -

73. However the above submission was rejected. The court held as Follows:-

"A specific question was asked to the petitioners' counsel as to whether arbitration proceedings were pending adjudication, at least on the day the submission was made. She answers by saying that no arbitration proceedings were pending on the date this court passed the order on **04.11.2016**.

Keeping all these facts in mind, it is apparent that the order dated **04.11.2016** was passed on the submission made by the petitioners' counsel. It is a false submission. Any order that is obtained which is based on falsity is a nullity. No such order can be sustainable which is based on false submissions.



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Therefore, such an order cannot remain in the eyes of law.

Therefore, in view of the submissions made by the petitioners' counsel herself, it is apparent that the said order has been passed purely based on the submission made earlier. The submission was to the effect that proceedings are pending considering before the arbitrator. It is a false submission. Under these circumstances, I.A.No.2 of 2018 is allowed"

74.The statement made by the counsel appearing for the Respondent before the Dharwad Bench of the Karnataka High Court is taken true, then it only shows that the Respondent had approached the learned Retired Judge ** as arbitrator and as he had gone to Delhi for legal practice, the arbitration could not go on must be a false statement as held by the Karnataka High Court. Either it must be the stand of the Respondent that they had only approached the proposed arbitrator, but did not get his consent or that after the appointment, the learned judge has gone to practice law and did not pursue the arbitration. Both statements cannot be true and in such a contingency, it was incumbent upon the Respondent to intimate the Claimant about the inability of the Arbitrator pursuing the arbitration".

Note : (* Dharwad Bench of the Karnataka High Court in its order dated 10.07.2018)

15. It appears that the petitioner had also filed **SLA(Crl.)No.2025 of 2017** before the Hon'ble Supreme Court against the order dated



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04.11.2016 allowing **Criminal Petition No.100349 of 2015** by the Dharwad Bench of the Karnataka High Court filed by the respondents.

16. SLA (Crl.) No.2025 of 2017, was disposed vide Ex.C57 order dated **20.03.2017** in view of the order dated **10.07.2018** in I.A.Nos.1 & 2 of 2018 in Crl.P.No.100349/2015. The petitioner thereafter sent Ex.C.58 letter dated **29.03.2017** to the respondent pursuant to the directions of the Hon'le Suprme Court which was acknowledged by the respondent on **09.05.2017**.

17. Vide Ex.C.66 reply dated **08.11.2017**, respondent sent a reply through its counsel to the petitioner. It is in this background, **O.P.No.617 of 2019** came to be filed by the petitioner before this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 which ultimately culminated in an Order dated **29.08.2019** whereby a Arbitral Tribunal was constituted with the Hon'ble Mr.Justice K.Chandru, as the Sole Arbitrator after recording the submission of the respondent. **Para 6 of Order** dated **29.08.2019** in **O.P.No.617 of 2019** reads as hereunder:-



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6. Heard both sides. Though the learned counsel for the respondent initially opposed the appointment of an Arbitrator, after some arguments, he is agreed for the appointment of an Advocate of this Court as the Arbitrator”.

18. In the claim petition that was filed before the Arbitral Tribunal, the petitioner had made a claim for a sum of **Rs.3,63,11,608/-** together with interest at the rate of **18% per annum** for the alleged loss suffered due to Termination of ExC19-Dealership Agreement dated 01.01.2012 vide **Ex.C.29** Termination Notice dated **18.04.2012**. The respondent had filed a detailed counter before the Arbitral Tribunal. The Arbitral Tribunal had initially framed **8 Issues**. Subsequently, the Arbitral Tribunal has also framed additional issues. It reads as follows:-

“57. After the completion of the trial, it was found that both sides have dwelt at length regarding the appointment of the previous arbitrator to go into the dispute and this was stoutly contested by the Claimant. If the appointment of the previous arbitrator on this dispute is really truthful, then the very existence of a second arbitrator may not be valid. Under the said circumstances, this Tribunal framed an additional issue which is numbered as issue no.9 and it is as follows:-

19. These issues were answered as follows by the Arbitral Tribunal:-



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Issue No. 1 :

Question : Whether the claim made by the Claimant is maintainable and whether or not it is hit by limitation?

Answer: –It is held that the present arbitral dispute is not hit by limitation and valid in law.

Issue No.2 :

Question :Whether the termination of the dealership by the Respondent (Ex.C29) is valid and binding on the Claimant?

Answer : It is held that the termination of the dealership (Ex.C.29) by the respondent is valid and binding on the claimant.

Issue No.3:

Question : Whether the Claimant is entitled to all the reliefs claimed under Paras 41 to 43 of the Claim statement under various heads?

Answer : The claimant is not entitled to get any amounts from the respondent including the amounts claimed in their statement of claim.

Issue No.4:

Question : Whether the dealership agreement dated 01.11.2011 (Ex.C19 & Ex.C20) is on the basis of Principal to Principal.

Answer : It is held that the dealership agreement between the parties is only on principal to



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principal basis.

Issue No.5:-

Question : Whether the dealership agreement (Ex.C19 & Ex.C20) is a non- exclusive dealership agreement?

Answer : It is held that the dealership agreement (Ex.C.19 & Ex.C.20) is a non-exclusive dealership

Issue No.6 :-

Question : Whether the Claimant had violated the dealership agreement?

Answer : The claimant who had violated the dealership agreement in Ex.C.19.

Issue No.7:-

Question : Whether the Claimant is entitled for interest on the amounts claimed by him by way of reliefs in the claim statement?

Answer : While answering the issue No.3, the reliefs claimed by the claimant have been negaived. Hence, the question of awarding interest does not arise.

Issue No.8:-

Question : Whether the parties are entitled for costs and if so to fix the quantum and liability of costs?



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Answer : The cost is quantified at Rs.5 lakhs which the respondent is directed to pay the claimant within one month from the date of Award. In other respects both parties are directed to bear their own costs except for the amount ordered.

Issue No.9:-

Question : *Whether it is a fact that the Respondent had appointed lawfully a retired Judge of the Madras High Court (Justice R. Balasubramanian) as an arbitrator to adjudicate the dispute between the parties invoking the clause for arbitration found in the dealership agreement (Ex.C19)?."*

Answer : It is hereby declared that the appointment of an arbitrator vide letter dated 30.05.2012 (Ex.C.93) is not correct. The request by the claimant and in spite of a power vested on the respondent vide agreement of dealership (Ex.C.19) was not considered and no actual arbitrator was appointed till the High Court of Madras appointing an arbitrator on a Sec.11 application filed by the claimant.

20. Aggrieved by the **Impugned Award** dated **30.01.2021**, the petitioner had originally filed Original Petition before the **V Additional District & Sessions Judge, Dharwad** sitting at Hubballi in **A.P.No.5001 of 2021** on **13.05.2021** under **Section 34** of the **Arbitration and**



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Conciliation Act, 1996.

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21. In **A.P.No.5001 of 2021, I.A.No.II** was filed before the **V Additional District & Sessions Judge, Dharwad** by the respondent. By an order dated **22.04.2022**, an order was passed in **I.A.No.II** by the **V Additional District & Sessions Judge, Dharwad sitting at Hubballi**. The **V Additional District & Sessions Judge, Dharwad sitting at Hubballi** dismissed the petition filed by the petitioner under **Section 34** of the Arbitration and Conciliation Act, 1996 with the following observations:

-

18. By looking into the facts and circumstances of this case as per the dealership agreement the petitioner has agreed that Chennai as the seat of arbitration. Accordingly, on the order of the Hon'ble High Court of Madras the sole arbitrator has been appointed before whom the parties of this proceedings have appeared, contested which has been culminated by way of award at Chennai. Thus, the Court of Chennai alone has the jurisdiction to entertain the petition under Section 34 of the Arbitration and Conciliation Act and not this Court. On that ground, I proceed to hold that applicant/respondent has made out the grounds that this Court has no jurisdiction to entertain this petition filed under Section 34 of



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the Arbitration and Conciliation Act. Thus, petition filed by the petitioner deserves for the dismissal. Accordingly, I answer the point No.1 in affirmative.

19. *Point No.2 : In view of discussion made on the above point, I proceed to pass the following:*

ORDER

Application filed in I.A.No.II by the applicant/respondent is hereby allowed.

This petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act is hereby dismissed as want of jurisdiction.

22. Aggrieved by the order dated **22.04.2022** in **A.P.No.5001 of 2021**, the petitioner filed **Miscellaneous First Appeal** in **MFA No.102369 of 2022 Dharwad Bench of Karnataka High Court**. The date of filing of the aforesaid **MFA No.102639 of 2022** is not clear from the document that have been filed by the petitioner.

23. However, the petitioner thereafter filed Memo dated **15.12.2022** before **Dharwad Bench of Karnataka High Court** to withdraw **MFA No.102369 of 2022** with a liberty to present it before the competent



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Jurisdictional Court namely this High Court.

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24. By an order dated **23.01.2023**, Memo dated 15.12.2022 filed before the **Dharwad Bench of Karnataka High Court** to withdraw with liberty to approach the Jurisdictional Court against the impugned Award dated **30.01.2021** was ordered.

25. It is in this background, the petitioner has filed the present Original Petition on **08.08.2023**. Meanwhile, the petitioner has also filed **E.P.No.1 of 2024** in **Arbitration No.6 of 2019** before the **Sub-Ordinate Judge Court, Ranipet** to enforce the Impugned Award dated **30.01.2021** to recover the cost of **Rs.5,00,000/-** from the respondent.

26. The respondent has taken serious objection to maintainability of the present original petition on the ground of limitation. It is submitted that the original petition has been filed long after expiry of limitation .

27. In the counter that has been filed it has been stated as follows:-



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“2. The counsel for the Respondent has conducted a search of the court bundle on 03.01.2024 and 04.01.2024 and has taken the documents and the relevant dates.

3. The Respondent, at the very outset, submits that the Petition as filed is clearly barred by limitation as can be seen from the details herein below.

RELEVANT LIST OF DATES

SL.No.	Description	Date	Remarks
1	Award	30.01.2021	Pg.No.83
2	A.P.No.5001 of 2021 Filed on	13.05.2021	Not filed by Petitioner
3	A.P.No.5001 of 2021 dismissed on	22.04.2022	Not filed by Petitioner
4	Memo in MFA.No.102369 of 2022	15.12.2022	Page 184
4	Miscellaneous First Appeal MFA No.102369 of 2022	23.01.2023	Page 185
5	Copy of the order made ready	09.02.2023	Para 6 of Section 34 petition, Page No.24
6	Registry returned certified copies	01.03.2023	Page No.184
7	Appeal u/s 34 before HC Madras filed on	28.04.2023	As per Section 34 petition endorsement in docket
	Particulars	No. of Days	No. of Days
A	i. Award dated 30.01.2021 ii. Application under Section 34 filed before the Hon'ble High Court of Madras on 28.04.2023		
	Total No. of days (period between (i) and (ii))		819
B	LESS		
	1. Less taken in filing Section 34 before		



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	<i>Hubbali</i>		
	2. <i>Date of order passed by Hubbali Court</i>		
	3. <i>Date of Appeal dismissed by Hon'ble Karnataka Bench and certified copies received</i>		
	<i>Total No. of days (period between (i), (ii) and (iii))</i>		658
C	<i>Total days taken for petitioner to approach this Court (819-658)</i>		161
	<i>Delay of 40 days</i>		

4. *As seen from the above, it is clear that the Petition under Section 34(2) of the Arbitration and Conciliation Act, 1996, has been filed well beyond the statutory period of three months as per Section 34(3) with a further period of maximum of 30 days if sufficient cause is shown as per proviso to Section 34(3) of the Act, in a total period of 120 days.*

5. *The Respondent respectfully submits that, the Petitioner herein was fully aware of the fact that the Arbitral Proceedings (seat & venue) was Chennai and the Courts at Chennai alone has jurisdiction.*

6. *The Respondent respectfully submits that, the Petitioner herein had issued a Notice invoking Arbitration on 07.05.2012. Thus, the period of limitation in so far as the filling of the Arbitral Proceedings are concerned, commenced on 07.05.2012”.*

28. It is submitted that without prejudice to the above contentions,



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it is also respectfully submitted that even if the action of the Petitioner was *bonafide* in approaching the **V Additional District and Sessions Judge, Hubli**, in **Application No.5601 of 2021**, the fact that the Order dated **22.04.2022** passed by the learned **V Additional District and Sessions Judge, Dharwad, Hubli**, had clearly held that the Courts at Chennai alone have exclusive jurisdiction and therefore the Petition was liable to be dismissed.

29. It is further submitted that filing of the **MFA No. 102368 of 2023** by the Petitioner on the file of the Hon'ble High Court Karnataka (Dharwad Bench) is thus a deliberate attempt to mislead and pursue a remedy in the Court which had no jurisdiction in the first place. The filing of Section 11 Application under Arbitration and Conciliation Act, 1996 before the Hon'ble High Court in **O.P.No.617 of 2019**, clearly demonstrate that the petitioner lacked *bonafide* and was resorting to forum shopping.

30. That apart, it is submitted that this counter is limited only for the purpose of the preliminary objections with regard to the limitation and the respondent reserves its right to file a detailed counter.



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31. The respondent has not made any submission on the merits of the ground raised by the petitioner challenging the impugned Award. The remedy against the impugned Award dated **30.01.2021** was wrongly attempted to be worked before the **V Additional District and Sessions Judge, Dharwad.**

32. The Award is dated **30.01.2021**. An Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 should have filed latest by **30.04.2021** or before **30.05.2021**, if the petitioner was prevented from filing earlier before 30.04.2021 explaining sufficient cause for condonation of delay before this Court under Section 34(3) of the Arbitration and Conciliation Act, 1996

33. However, **A.P.No.5001/2021** filed on **13.05.2021** before **V Additional District and Sessions Judge, Dharwad.** Since, **A.P.No.5001/2021** was numbered after it was filed on **13.05.2021**, it is presumed that there was no delay in filing **A.P.No.5001 of 2021** before the **V Additional District and Sessions Judge, Dharwad.**



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34. Presentation of **A.P.No.5001 of 2021** before the **V Additional District and Sessions Judge, Dharwad** was before a Court which lacked jurisdiction. It was this Court alone which was competent to entertain a petition under Section 34(3) of the Arbitration and Conciliation Act, 1996 against the impugned Award. To compound the issue further, the petitioner, however preceded to **MFA.No.102369 of 2022** before the Karnataka High Court but later had it dismissed as not pressed after filing a **Memo** dated **15.12.2022** to work out the remedy before this Court.

35. The time between the date of receipt of certified copy of the order dated **22.04.2022** in **A.P.No.5001 of 2021** to date of presentation of **MFA.No.102369 of 2022** and filing a Memo dated **15.12.2022**, and the date of said order on **23.01.2023** which was received on **01.03.2023** and eventual presentation of the present the Original Petition before this Court on **28.04.2023** cannot be condoned in view of Section 14 of the Limitation Act, 1963.

36. **A.P.No.5001 of 2021** that was filed was not prosecuted in good faith. To compound further, the petitioner filed **MFA.No.102369 of 2022**



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against order dated **22.04.2022** in A.P.No.5001 of 2021 before the Dharwad Bench of the Karnataka High Court .

37. The time spent between **13.05.2021** upto **22.04.2022** and upto the date of receipt of certified copy of the order in **A.P.No.5001 of 2021** can be excluded for the purpose of computation of Limitation under Section 34 of Arbitration and Conciliation Act, 1996 only and Section 14 of the Limitation Act,1963, if it was proceeded in good faith.

38. The time spent before the **Dharwad Bench of Karnataka High Court** in **MFA.No.102369 of 2022** would not warrant exclusion of time for computing the period of Limitation as these proceedings were not bonafide. Section 14 of the Limitation Act,1963, reads as under:-

Limitation Act, 1963	
14(1)(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same	(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party



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Limitation Act, 1963	
matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it”.	for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
(3) Notwithstanding anything contained in rule 2 of Order XXII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.	

39. Thus, it cannot be said that the present Original Petition who warrants exclusion of time under Section 14(2) of the Limitation Act, 1963. Therefore, the objection raised by the respondent is answered in favour of the respondent and against the petitioner.

40. Under such circumstances, the present original petition is liable to be dismissed and is accordingly dismissed. No costs.

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