



Arb.O.P. (Com.Div.) No.439 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.439 of 2023

M/s.Bengal Mill Stores Supply Company,
205, Maganlal Chambers,
Baburao Bobde Marg,
Iron Market,
Mumbai – 400 009
Represented herein by its POA Holder
Mr.Virendra C Doshi
No.14/8, Shree Hind Co-Op HSG.Society Ltd,
Duncan Causeway Road,
Sion, Mumbai – 400 022.

.. Petitioner

Vs.

M/s.Shriram EPC Limited,
No.29A, 2nd Floor,
Sranthi Nagar,
Bangalore – 560 027.

.. Respondent

Prayer: Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to hear and decide the disputes between the parties arising out of the arbitral Agreement dated 15.07.2012.



WEB COPY



Arb.O.P. (Com.Div.) No.439 of 2023

For Petitioner : M/s.G.R.Hari

For Respondent : Mr.Suresh for
M/s.Shivakumar and Suresh

ORDER

This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to hear and decide the disputes between the parties arising out of the arbitral Agreement dated 15.07.2012.

2. The dispute between the petitioner and the respondent is arbitrable in terms of the following Clause in the Purchase Order of the respondent which reads as under:-

“Arbitration.

If any dispute arises between the parties hereto during the subsistence of this Purchase order and Annexures to LOI, Purchase Order/Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this purchase order and Annexures to Purchase Order/Agreement, the parties shall endeavour to settle such dispute amicably.

In the case of failure by the parties to resolve the disputes in the manner set out above within 30 days from the date when the dispute arose, the dispute shall referred to arbitration between the



WEB COPY



Arb.O.P. (Com.Div.) No.439 of 2023

parties, by a sole Arbitrator to be appointed by the Purchaser. The place of Arbitration shall be at Chennai, India and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any amendments thereto. The proceedings of the Arbitration shall be in English.”

3. The dispute pertains to supplies effected by the petitioner to the respondent under a invoice dated 11.03.2019. Originally, the limitation would have expired within a period of three years from the date of the default committed by the respondent. The period would have expired on 10.03.2021, during the period when the country was under intermittent lockdown. The Hon'ble Supreme Court in its order dated 23.03.2020, is extended from time to time. Finally, by an order dated 10.01.2022, the Hon'ble Supreme Court had passed the following order:-

“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 the 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.



WEB COPY



Arb.O.P. (Com.Div.) No.439 of 2023

(iii) In cases 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.

(v) 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.”

4. Thus, the period between 15.03.2020 till 28.02.2022 was to stand excluded in computing the period of limitation under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015.

5. On the other hand, the petitioner has issued a notice invoking arbitration Clause under the aforesaid Purchase Order only on 17.03.2023. The Hon'ble supreme Court has recently clarified this issue in the case of **B and T AG Vs. Ministry of Defence** reported in [(2023) SCC Online SC 657].



WEB COPY

6. The Hon'ble Supreme Court had reiterated the views taken earlier in the case of ***Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta*** reported in [(1993) 4 SCC 338]. In Paragraph Nos.77 and 78 from the decision of the Hon'ble Supreme Court in ***B and T AG Vs. Ministry of Defence*** reported in [(2023) SCC Online SC 657] is reproduced below.

“77.Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the “cause of action” for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating.

78.In Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta reported in (1993) 4 SCC 338, this Court had held that the provisions of the Act 1963 would apply to arbitrations and notwithstanding any term in the contract to the contrary, cause of arbitration for the purpose of limitation shall be deemed to have accrued to the party, in respect of any such matter at the time when it should have accrued but for the contract. Cause of arbitration shall be deemed to have commenced when one party serves the notice on the other party requiring the appointment of an arbitrator. The question was when the cause of arbitration arises in the absence of issuance of a notice or omission to issue notice for a long time after the contract was executed? Arbitration implies to charter out timeous commencement of arbitration availing of the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aids promptitude and resultant consequences. Defaulting party should



WEB COPY



Arb.O.P. (Com.Div.) No.439 of 2023

bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. It was further held that where the arbitration agreement does not really exist or ceased to exist or where the dispute applies outside the scope of arbitration agreement allowing the claim, after a considerable lapse of time, would be a harassment to the opposite party. It was accordingly held in that case that since the petitioner slept over his rights for more than 10 years, by his conduct he allowed the arbitration to be barred by limitation and the Court would be justified in relieving the party from arbitration agreement under Sections 5 and 12(2)(b) of the Act.”

7. In view of the above, this Arbitration Original Petition is liable to be dismissed.

8. Accordingly, this Arbitration Original Petition stands dismissed.

No costs.

06.02.2024

jas

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No



WEB COPY



Arb.O.P. (Com.Div.) No.439 of 2023

C.SARAVANAN, J.

jas

Arb.O.P.(Com.Div.)No.439 of 2023

06.02.2024