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

\+ ARB.P. 612/2023

GUJARAT STATE CO-OPERATIVE GRAIN GROWERS FEDERATION LTD. ..... Petitioner

Through: Mr. Ashish Khorana, Adv.

versus

UNION OF INDIA ..... Respondent

Through: Ms. Amrita Prakash, CGSC with Mr. Vishal Ashwani Mehta, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% **11.03.2024**

1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes that have arisen between the petitioner and respondent.
2. The petitioner participated in the tender and was awarded with the order/AT No: 62702/Q/5(3)/AT/2016-17/Pulses (Urd Whole)/ 2016/APO (Pur-III) dated 05.04.2016, for supply of 200 MT of the Urd Whole at the basic cost of Rs. 1,02,091/- per MT which the delivery schedule from 16.06.2016 to 15.07.2016 with the terms to furnish security of Rs. 20,41,820/-.
3. As per the respondent, since there was violation of the terms of the contract, the respondent terminated the contract on 12.04.2017.
4. Within 3 years of termination, the petitioner invoked the arbitration Clause on 03.12.2019 and thereafter filed the present petition on

31.05.2023.

5. Ms. Prakash, learned CGSC appearing on behalf of the respondent disputes the factual matrix and in addition states that the present petition is hopelessly time barred.

6. Recently, the Hon'ble Supreme Court has dealt with the issue of limitation in "***Arif Azim Co. Ltd. v. Aptech Ltd., (2024:INSC:155)*** and more particularly paragraph 82 to 84 reads as under:-

> *"82. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27.03.2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in* **Suo Motu Civil Writ Petition No. 03/2020** *directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022. Operative part of the order dated 10.01.2022 is extracted hereinbelow:*
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> > *"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.

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."

83. The operation and effect of the aforesaid order was considered and explained by a two-Judge Bench of this Court in Prakash Corporates v. Dee Vee Projects Ltd., (2022) 5 SCC 112 as follows:

"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even

though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801], this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250], this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. <u>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 [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."</u>

(emphasis supplied)

84. The effect of the above-referred order of this Court in the facts of the present case is that the balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the *petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023."*

7. On perusal of the above paragraphs, the judgment passed in ***Cognizance for Extension of Limitation, In re, (2022) 441 ITR 722*** has been clarified and the period from 15.03.2020 to 28.02.2022 is to be excluded for the period of limitation. Therefore, the balance limitation remaining on 15.03.2020 will become available with effect from 01.03.2022.

8. Keeping this in mind, the petitioner in the present case invoked the arbitration clause on 03.12.2019, therefore the limitation period for filing the present petition will be 3 years as per Article 137 of the Limitation Act which will expire on 03.12.2022. As per the judgements noted above, the balance period of 15.03.2020 to 03.12.2022 will be available from 01.03.2022. If the said period is added, the petition filed on 31.05.2023 is within the limitation. Hence, the petition is maintainable.

9. With regard to the disputes in factual matrix, the issues are kept open and parties are at liberty to agitate before the learned Arbitrator.

10. For the said reasons, the petition is allowed and the following directions are issued:-

    i) Ms. Sonu Bhatnagar, Adv. (Mob. No. 9810134678) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

    ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher

Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

11. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 11, 2024 / (MS)

Click here to check corrigendum, if any