



2025:DHC:1062-DB



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

Date of decision: 19.02.2025

+ **FAO (COMM) 251/2024**

M/S HITACHI PAYMENTS SERVICES PVT LTD & ANR.

.....Appellants

Through: Mr. Vinod Kumar, Adv.

versus

SH. SHREYANS JAIN & ANR.Respondents

Through: Mr. Abhishek Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 76060/2024

1. This application has been filed by the Appellants, seeking a condonation of delay of 117 days in filing the present Appeal.

2. The delay is condoned and the application is allowed.

FAO (COMM) 251/2024 & CM APPL. 76059/2024

3. This Appeal has been filed by the Appellants, challenging the Order dated 29.05.2024 passed by the learned District Judge, Commercial Court, New Delhi, Rohini (Trial Court) in CS(COMM) 237/2023, whereby the application filed by the Appellants under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') has been dismissed.

4. The learned counsel for the Respondents submits that the application filed by the Appellants itself was not maintainable before



2025:DHC:1062-DB



the learned District Judge inasmuch as the Appellants had been duly served with the summons of the suit on 20.07.2023, and being a commercial suit of a specified value, the maximum period for filing the written statement including the period by which the delay in filing the same can be condoned, being 120 days of the receipt of the summons, had expired on 18.11.2023. The right of the Appellants to file the defence was consequently struck off by the learned Trial Court *vide* Order dated 22.12.2023. He submits that in view of the law laid down by this Court in ***SPML Infra Ltd. vs. Trisquare Switchgears Pvt. Ltd.***, 2022 SCC OnLine Del 1914, the application was not maintainable.

5. On the other hand, the learned counsel for the Appellants submits that this plea was not taken by the Respondents before the learned Trial Court. He further submits that the Impugned Order has been passed on a legally incorrect premise, that once the period of the lease deed has expired, a dispute in relation to the lease deed is no longer arbitrable.

6. We have considered the submissions made by the learned counsels for the parties.

7. While on merits, we agree with the submissions of the learned counsel for the Appellants that the arbitration agreement being a severable agreement, it does not become inoperable merely because of the expiry of the main agreement, that is, the lease deed, at the same time in the present case, the Appellants have filed the application under Section 8 of the Act after the lapse of the statutory period of limitation for filing of the written statement and upon its defence



being struck off by an Order dated 22.12.2023 passed by the learned Trial Court. The application filed under Section 8 of the Act, thereafter, was no longer maintainable.

8. In ***SPML Infra*** (supra), the Division Bench of this Court, considering the provisions of Section 8 of the Act, has held as under:-

“18. It is clear from the scheme of the Act that once the proceedings before the court or judicial authority progress beyond the initial stage, it would no longer be permissible for a party to then turn around and seek recourse to arbitration. A mere delay in making an application under Section 8 of the A&C Act may not be fatal to a party’s right; but once the proceedings have progressed beyond the stage of completion of pleadings, such an application would not lie. This is because at that stage, the parties are sufficiently invested in the said proceedings, and it would not be permissible for any party to turn around and apply under Section 8 of the A&C Act.

19. If a party’s right to file a statement of defence is closed, the same would also result in its rights accruing in favour of the other party. Clearly, at this stage, it would not be permissible for a party to apply under Section 8 of the A&C Act even though he has not expressly evinced any intention to contest the proceedings. It is implicit in the expression “not later than submitting the first statement of substance of the dispute” that the application under Section 8 of the A&C Act can be made at the stage when it is open for a party to submit such a statement. It, obviously, follows that once such a stage is crossed, the right of the party to apply under Section 8(1) of the A&C Act would also stand closed. The scheme of Section 8 of the A&C Act does not contemplate unraveling concluded proceedings. Once the right of a party to file the written statement of defence is closed, the proceedings in a suit progress beyond the stage of completion of pleadings. It is not open for the defendant to now seek a reference to arbitration. Although Section 8 of the A&C Act (as in force prior to 23.10.2015) did not specify any time limit, it did indicate the stage of the proceedings at which a party could apply, that is, before filing of the first statement



on the substance of the dispute. This clearly implies a stage at which such a statement could be filed and not thereafter.

20. If the contention advanced by the appellant is accepted, it would imply an application under Section 8 of the A&C Act can be allowed to be filed at any stage of the proceedings; even after the evidence is tendered and witnesses have been cross-examined or for that matter just before the matter is fixed for pronouncement of the decision. Clearly, this is not in conformity with the scheme of Section 8 of the A&C Act.

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22. The change in the language of Section 8(1) of the A&C Act is material. Whereas prior to the 2015 Amendment, Sub-section (1) of Section 8 of the A&C Act used the expression “not later than when submitting his first statement on the substance of the dispute”. Sub-section (1) of Section 8, as substituted, uses the expression “not later than the date of submitting his first statement on the substance of the dispute”. The legislative intent to introduce the words “not later than the date of” clearly stipulates a framework of time within which an application under Section 8(1) of the A&C Act can be made.

23. This amendment to Section 8 of the A&C Act, cannot be considered in isolation. It is material to note that the Parliament had also enacted the Commercial Courts Act, 2015 (Act 4 of 2016), which came into force on the same date as the Arbitration and Conciliation (Amendment) Act, 2015, that is, with effect from 23.10.2015. By virtue of Section 16 of the said Act, certain provisions of the CPC were amended in their application to any suit in respect of a commercial dispute of the specified value. The said provisions, inter alia, also included amendment to Order VIII Rule 1 and Order VIII Rule 10 of the CPC. The proviso to Order VIII Rule 1 of the CPC was substituted, which expressly provided that if the defendant failed to file a written statement within the prescribed period of thirty days, the court could, for reasons to be recorded in writing, extend further time to file the written statement. However, such extended time could not be later than 120 days from the date of service of summons. Further, the proviso to Order VIII Rule 10 of the CPC was introduced, which



expressly provided that no court would make an order to extend the time provided under Order VIII Rule 1 of the CPC for filing of the written statement. Thus, the Parliament has curtailed the outer time limit of filing of a written statement in a commercial suit to 120 days after receipt of summons. The said amendment is obviously to ensure expeditious adjudication of commercial disputes.

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25. As stated above, a written statement would also fall within the sweep of expression “statement on the substance of the dispute” as used in Section 8(1) of the A&C Act. The introduction of the expression “the date of” in the context of the suit would necessarily have to be co-related with the time available or granted for filing of a written statement. The legislative intent of introducing the expression “the date of”, when read with the contemporaneous amendments to Order VIII Rule 1 of the CPC by virtue of the Commercial Courts Act, 2015, is quite clear; it is to introduce the precise time frame within which an application under Section 8(1) of the A&C Act could be filed.

26. Resultantly, if a party fails to file an application under Section 8(1) of the A&C Act for referring the parties to arbitration within the time available or granted for filing the first statement on the substance of the dispute (which would include a written statement in the context of a suit), the party would forfeit its right to apply under Section 8(1) of the A&C Act.”

(Emphasis supplied)

9. In **Ranjana Bhasin vs. Surender Singh**, 2024:DHC:499-DB, a Co-ordinate Bench of this Court placing reliance on the Judgment of this Court in **SPML Infra** (supra), held that an application under Section 8 of the Act is not maintainable if filed beyond the period prescribed for filing of the written statement.

10. In view of the above, the application filed by the Appellants



2025:DHC:1062-DB



itself was not maintainable, the period for filing of the written statement having expired and, in fact, the defence of the Appellants having been struck off by the learned Trial Court *vide* the Order dated 22.12.2023.

11. In view of the above, we find no merit in the present Appeal. The same is, accordingly, dismissed. The pending application also stand disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 19, 2025
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Click here to check corrigendum, if any