Tata Sons Pvt. Ltd. (Formerly Tata Sons ... vs Siva Industries And Holdings Ltd. on 5 January, 2023

Bench: Pamidighantam Sri Narasimha, Dhananjaya Y Chandrachud

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Miscellaneous Application No 2680 of 2019
In
Arbitration Case (Civil) No 38 of 2017

TATA Sons Pvt Ltd (Formerly TATA Sons Ltd)

Versus

Siva Industries and Holdings Ltd & Ors

JUDGMENT

Dr Dhanajaya Y Chandrachud, CJI 1 The applicant Tata Sons Pvt Ltd is a company incorporated under the Indian Companies Act 1913. The first respondent, Siva Industries and Holdings Ltd is a company incorporated under the Companies Act 1956 with a registered office at Chennai. The second respondent, C Sivasankaran, who is the promoter of the first respondent is a resident of Seychelles.

2 The applicant, the first respondent and Tata Tele Services Ltd 1 executed a share "TTSL" subscription agreement on 24 February 2006 for the issuance and allotment of shares of TTSL to Siva Industries in accordance with its terms and conditions. 3 Subsequently, a share subscription agreement dated 12 November 2008 was entered into between NTT Docomo Inc, 2 a company incorporated in Japan, the applicant and TTSL. In terms of the agreement, Docomo sought to acquire 26% of the equity share holding of TTSL through a combination of primary shares (fresh shares issued and allotted by TTSL) and secondary shares (shares held by certain existing shareholders of TTSL).

4 The first respondent was an existing shareholder of TTSL and was invited to participate in the sale of secondary shares to Docomo. Accordingly, Docomo and the first respondent executed a secondary share purchase agreement dated 3 March 2009 in terms of which Docomo acquired 20.740 million equity shares of TTSL from the first respondent. The applicant, TTSL and Docomo executed a Shareholders' Agreement dated 25 March 2009 to record the terms and conditions of the understanding between the parties regarding the rights, obligations and duties with respect to Docomo's ownership of shares of TTSL. Thereafter, the applicant, TTSL and the respondents executed an Inter se agreement. The agreement, inter alia, obliged the respondents to purchase the TTSL shares on a pro-rata basis in the event Docomo exercised its sale option under the Shareholder's Agreement.

5 Docomo addressed a sale notice on 7 July 2014 to the applicant while invoking its sale option under clause 5.7 of the Shareholder's Agreement dated 25 March 2009.

"Docomo" 6 Disputes having arisen between the applicant and Docomo, the latter invoked arbitration against the applicant under the Rules of the London Council for International Arbitration. A three-member Tribunal made its award dated 22 June 2016, consequent upon which the applicant was called upon to make payment to Docomo and to acquire the shares of TTSL which were put by Docomo.

7 Thereupon, the applicant called upon the first respondent under the Inter se agreement to proportionately pay for and acquire back its shareholdings in TTCL from Docomo. Under the terms of the Inter se agreement, the second respondent, as promoter of the first respondent company, had agreed to be liable to the applicant in the event that the first respondent failed to fulfill its obligation. 8 The applicant issued a notice of arbitration on 15 June 2017 to the first respondent and to the second respondent (a foreign party, being a resident of Seychelles) under Clause 10 of the Inter se agreement and nominated an arbitrator. Clause 10 states that the Arbitration shall be at Mumbai and Mumbai Courts have exclusive jurisdiction. The number of arbitrators is fixed as three by the Clause. 9 The respondents did not appoint their nominee arbitrator despite the service of the arbitration notice. The applicant filed a petition before this Court under Section 11(6) of the Arbitration and Conciliation Act 1996 3 for the constitution of an arbitral tribunal in an international commercial arbitration. The Supreme Court had exclusive jurisdiction to entertain the arbitration petition since the proposed arbitration between the applicant and the respondents, of whom the second respondent is a foreign party, was an international commercial arbitration in terms of Section 2(1)(f) of the Arbitration Act.

"Arbitration Act" 10 By an order dated 17 January 2018 of this Court in proceedings initiated under Section 11(6) of the Arbitration Act, Mr Justice S N Variava was appointed as the sole arbitrator with the consent of the parties.

11 The arbitrator entered upon the reference on 14 February 2018. On 21 March 2018, a preliminary meeting was held between the parties and the arbitrator at which the parties agreed to a six months extension, if the arbitral proceedings could not be completed within a period of twelve months commencing from the date the arbitral tribunal entered reference. The time to deliver the award in

the proceedings before the arbitral tribunal stood extended until 14 August 2019 since the parties had consented to an extension of six months.

12 The applicant filed the statement of claim on 13 April 2018. The first respondent filed the statement of defense on 21 June 2018. On 30 July 2018, the arbitral tribunal disposed of applications under Sections 16 and 17 filed by the first respondent and the applicant respectively. Between 15 and 25 October 2018, the examination of the applicant and the first respondent's witnesses took place before the arbitral tribunal. 13 During the pendency of the arbitral proceedings, IDBI Bank Ltd initiated insolvency proceedings against the first respondent under the Insolvency and Bankruptcy Code 2016.4 By an order dated 5 July 2019, the National Company Law Tribunal, Chennai initiated the Corporate Insolvency Resolution Process 5 under the IBC and placed a moratorium on all proceedings against the first respondent, including "IBC" "CIRP" arbitral proceedings.

14 The original period of one year and the extension of six months which was agreed upon by the parties expired on 14 August 2019. On 14 December 2019, a Miscellaneous Application6 was filed by the applicant before this Court seeking an extension of the mandate of the tribunal. The applicant sought an extension of the mandate of the arbitral tribunal from 14 August 2019 for a period of six months after the date on which the moratorium imposed under the IBC on 5 July 2019 against the first respondent would stand vacated.

15 The hearing of the MA was adjourned by an order of this Court dated 7 January 2020 in view of the circumstances at that time.

16 In the meantime, on 3 June 2022, the first respondent has been freed from the rigours of the CIRP in pursuance of an order passed by this Court. Accordingly, there is no longer a moratorium over proceedings against the first respondent, with effect from 3 June 2022.

17 An interlocutory application7 has been filed on behalf of the applicant in the MA in view of two developments:

> a. The first respondent, as a consequence of the order of this Court dated 3 June 2022, has been freed from the rigours of the CIRP; and b. As a result of the amendment of Section 29A of the Arbitration and Conciliation Act, 1996, with effect from 30 August 2019, the arbitration proceedings before the sole arbitrator should, in the submission of the applicant, be allowed to automatically continue in view of the amendment of the statute.

18 For convenience of reference, the reliefs which have been sought in the IA are extracted below:

> "a. Hold that the Arbitration Proceedings between the parties herein, presided over by the Ld. Sole Arbitrator (Retd.) Hon'ble Mr. Justice S.N. Variava, may be allowed to continue without any need for an extension of the term of the Ld. Sole Arbitrator; or b. Alternatively, in the event this Hon'ble Court is of the opinion that the amended

> Section 29A (following the 2019 Amendment) is inapplicable to the present Arbitration Proceedings, allow the extension of the time limit within which Ld. Sole Arbitrator (Retd.) Hon'ble Mr. Justice S.N. Variava is to render an award in the Arbitration Proceedings between the parties by a period of 1 year."

19 This Court issued notice on the IA on 25 November 2022.

20 The provisions of Section 29A were introduced into the Arbitration Act with effect from 23 October 2015 by Act 3 of 2016 8. Section 29A was substituted by Act 33 of 20199 with effect from 30 August 2019. The provisions of Section 29A as originally inserted and as they stand after the amendment of 2019 are tabulated below:

> SECTION 29-A PRE AND POST 2019 AMENDMENT Post 2015 Amendment w.e.f. Post 2019 Amendment w.e.f.
>
> 23.10.2015 30.08.2019 29A. (1) The award shall be made 29A. (1) The award in matters other than within a period of twelve months from international commercial arbitration shall be the date the arbitral tribunal enters made by the arbitral tribunal within a period of upon the reference. twelve months from the date of completion of pleadings under sub-section (4) of 2015 Amendment Act 2019 Amendment Act Explanation. -For the purpose of this section 23:
>
> sub-section, an arbitral tribunal shall be deemed to have entered upon the Provided that the award in the matter of reference on the date on which the international commercial arbitration may be arbitrator or all the arbitrators, as the made as expeditiously as possible and case may be, have received notice, in endeavor may be made to dispose of the writing, of their appointment. matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.
>
> (2) If the award is made within a period (2) If the award is made within a period of six of six months from the date the arbitral months from the date the arbitral tribunal tribunal enters upon the reference, the enters upon the reference, the arbitral tribunal arbitral tribunal shall be entitled to shall be entitled to receive such amount of receive such amount of additional fees additional fees as the parties may agree.

as the parties may agree.

(3) The parties may, by consent, extend (3) The parties may, by consent, extend the the period specified in sub-section (1) period specified in sub-section (1) for making for making award for further period not award for further period not exceeding six exceeding six months. months.

(4) If the award is not made within the (4) If the award is not made within the period period specified in sub-section (1) or specified in sub-section (1) or the extended the extended period specified under period specified under sub-section (3), the sub-section (3), the mandate of the

mandate of the arbitrator(s) shall terminate arbitrator(s) shall terminate unless the unless the Court has, either prior to or after the Court has, either prior to or after the expiry of the period so specified, extended the expiry of the period so specified, period.

extended the period.

Provided that while extending the Provided that while extending the period under period under this sub-section, if the this sub-section, if the Court finds that the Court finds that the proceedings have proceedings have been delayed for the been delayed for the reasons reasons attributable to the arbitral tribunal, attributable to the arbitral tribunal, then, then, it may order reduction of fees of it may order reduction of fees of arbitrator(s) by not exceeding five per cent for arbitrator(s) by not exceeding five per each month of such delay. cent for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

> Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to (5) The extension of period referred to in sub-

in sub-section (4) may be on the section (4) may be on the application of any of application of any of the parties and the parties and may be granted only for may be granted only for sufficient sufficient cause and on such terms and cause and on such terms and conditions as may be imposed by the Court. conditions as may be imposed by the Court.

(6) While extending the period referred (6) While extending the period referred to in to in sub-section (4), it shall be open to sub-section (4), it shall be open to the Court to the Court to substitute one or all of the substitute one or all of the arbitrators and if one arbitrators and if one or all of the or all of the arbitrators are substituted, the arbitrators are substituted, the arbitral arbitral proceedings shall continue from the proceedings shall continue from the stage already reached and on the basis of the stage already reached and on the basis evidence and material already on record, and of the evidence and material already on the arbitrator(s) appointed under this section record, and the arbitrator(s) appointed shall be deemed to have received the said under this section shall be deemed to evidence and material. have received the said evidence and material.

(7) In the event of arbitrator(s) being (7) In the event of arbitrator(s) being appointed appointed under this section, the under this section, the arbitral tribunal thus arbitral tribunal thus reconstituted shall reconstituted shall be deemed to be in be deemed to be in continuation of the continuation of the previously appointed previously appointed arbitral tribunal. arbitral tribunal. (8) It shall be open to the Court to (8) It shall be open to the Court to impose impose actual or exemplary costs upon actual or exemplary costs upon any of the any of the parties under this section. parties under this section. (9) An application filed under sub- (9) An application filed under sub-section (5) section (5) shall be disposed of by the shall be disposed of by the Court as Court as

expeditiously as possible and expeditiously as possible and endeavour shall endeavour shall be made to dispose of be made to dispose of the matter within a the matter within a period of sixty days period of sixty days from the date of service of from the date of service of notice on the notice on the opposite party" opposite party (emphasis supplied). (emphasis supplied).

21 We have heard Mr Jaideep Gupta, senior counsel appearing on behalf of the applicant and Mr Ankur Kashyap, counsel appearing on behalf of the second respondent.

22 The submission which has been urged on behalf of the applicant is that as a result of the amendment of Section 29A by Act 33 of 2019, the period of 12 months prescribed for making an award from the date of the completion of the pleadings has ceased to apply to an international commercial arbitration. Hence, it has been urged that the amendment being of a procedural nature, the amended provision would apply to the arbitral proceedings in the present case following the appointment of Justice S N Variava on 17 January 2018 and pursuant to the arbitrator entering upon reference on 14 February 2018. Alternatively, the applicant has urged that in the event that this Court were to hold that the amended provisions of Section 29A are inapplicable to the present arbitration, a further extension of time may be granted to the sole arbitrator to complete the arbitral proceedings.

23 The first respondent has not entered appearance in these proceedings. The second respondent, who is contesting the proceedings as a guarantor, has urged that the amendment of Section 29A by Act 33 of 2019 would not lead to the conclusion that an international commercial arbitration lies outside the purview of the provision. The second respondent has submitted that reading the provisions of Section 29A in the manner in which the applicant seeks to read them would result in a situation where there would be no timeline under the statute for an international commercial arbitration. Where an international commercial arbitration is governed by the Rules of an arbitral institution, such rules would structure the conduct of the arbitration. The second respondent has submitted that it was not the intention of the legislature that in a case which is not governed by an arbitral institution, the court would have no control over the time taken in the course of the arbitral proceedings leaving the matter entirely within the discretion of the arbitral forum in a situation such as the present, where the arbitral proceeding is governed by Indian Law and has a seat within the country. 24 The provisions of Section 29A, as originally introduced into the statute, mandated that all awards shall be made within a period of twelve months from the date on which the arbitral tribunal enters upon the reference. The explanation clarified when the arbitral tribunal would be deemed to have entered upon the reference, namely, the date on which the arbitrator has received written notice of the appointment. The mandatory nature of the provisions of Section 29A(1) and their application to all arbitrations conducted under the Act, domestic or international commercial, was evident from the use of the word "shall". In terms of Section 29A(4), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown. 25 After the amendment, Section 29A(1) stipulates that the award "in matters other than international commercial arbitration" shall be made by the arbitral tribunal within a period of twelve months from the date of the completion of the pleadings under Section 23(4).10 The expression "in matters other than an international commercial

arbitration" makes it abundantly clear that the timeline of twelve months which is stipulated in the substantive part of Section 29A(1), as amended, does not apply to international commercial arbitrations. This is further reaffirmed in the proviso to Section 29A(1) which stipulates that the award in the matter of an international commercial arbitration "may be made as expeditiously as possible" and that an "endeavour may be made to dispose of the matter within a period of 12 months" from the date of the completion of pleadings. The expression "as expeditiously as possible" coupled with the expression "endeavour Section 23(4) of the Arbitration Act, as inserted by Act 33 of 2019, provides that "The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment." may be made" demonstrate that the intent of Parliament is that the period of twelve months for making the award is not mandatory in the case of an international commercial arbitration. In an international commercial arbitration, the arbitral tribunal is required to endeavour, that is, make an effort to render the arbitral award within a period of twelve months or in a timely manner. In a domestic arbitration, Section 29A(1) stipulates a mandatory period of twelve months for the arbitrator to render the arbitral award. In contrast, the substantive part of Section 29A(1) clarifies that the period of twelve months would not be mandatory for an international commercial arbitration. Hence, post amendment, the time limit of twelve months as prescribed in Section 29A is applicable to only domestic arbitrations and the twelve-month period is only directory in nature for an international commercial arbitration.

26 Sub-section (3) of Section 29A empowers parties, by consent, to extend the period specified in sub-section (1) for making the award by a further period not exceeding six months. Thereafter, if the award is not made within the period which is specified in sub-section (1) or the extended period specified in sub-section (3), the mandate of the arbitrator shall terminate unless the court has extended the period either prior to or after the expiry of the period so specified. In other words, the timeline of twelve months for making the award (in matters other than international commercial arbitration), is qualified by the consensual entrustment to the parties under sub-section (3) to extend the period by six months after which the court is empowered in terms of sub-section (4) to extend the period for making the award. The submission of the second respondent is that the provisions of sub-section (3) and sub-section (4) must also apply to an international commercial arbitration. This would merit close scrutiny. The legislature has not expressly excluded the applicability of sub-sections (3) and (4) of Section 29A to an international commercial arbitration. But, at the same time, it must be noticed that the rationale underlying sub-section (3) is to ensure that despite the stipulation of twelve months for the making of an arbitral award in the domestic context, parties may by consent agree to an extension of time by a further period of six months. Such an extension of six months is envisaged in the case of a domestic arbitration since there is a mandate that the award shall be made within a period of twelve months. A further extension has, however, been entrusted to the court in terms of sub-section (4) of Section 29A. However, insofar as an international commercial arbitration is concerned, the statutory regime is clear by the substantive part of sub-section 1 of Section 29A in terms of which the timeline of twelve months for making an arbitral award is not applicable to it. In an international commercial arbitration, the legislature has only indicated that the award should be made as expeditiously as possible and that an endeavour may be made to dispose of the matter within a period of twelve months from the completion of pleadings.

27 The introduction of amended Section 29A finds its genesis in the report dated 30 July 2017 of the Committee chaired by Justice B N Srikrishna. The 'High Level Committee', as it is described, was set up to review the "institutionalization of (the) arbitration mechanism" in India. The report specifically elaborates upon the reason for the exclusion of international commercial arbitrations from the ambit of the mandatory timeline of twelve months stipulated in the context of a domestic arbitration. The report of the Committee records:

> "In fact, one of the provisions of the ACA — section 29A — which was inserted by the 2015 Amendment Act, is perceived to have made arbitral institutions wary of arbitrations in India. Section 29A provides for strict timelines for completion of arbitration proceedings. This has been criticised as unduly restrictive of the conduct of arbitrations by arbitral institutions which provide for timelines for different stages of the arbitration proceedings." "The Committee notes that international arbitral institutions have strongly criticised the setting of timelines for conducting international commercial arbitrations. These institutions are of the view that monitoring the conduct of the arbitral proceedings is best left to the arbitral institutions. Institutions have their own machinery for case management and do not require monitoring by the court. With respect to domestic arbitrations, the general opinion of arbitrators is that the timelines fixed for conducting domestic arbitrations under section 29A should take effect post completion of pleadings."

28 The recommendations of the Committee are extracted below:

> "1. A new sub-section may be inserted in section 29A limiting the applicability of the section to domestic arbitrations only. International commercial arbitrations may be left outside the purview of the timelines provided in Section 29A.
>
> 2. Section 29A(1) may be amended such that the time in section 29A(1) starts to run post completion of pleadings.

Further, a time period of 6 months may be provided for submission of pleadings.

3. Section 29A(4) may be amended to provide that if an application under Section 29A(5) is filed before a court, the mandate of the arbitral tribunal continues till the application is disposed.

4. Section 29A(9) may be amended to add if the application is not disposed of within the period mentioned therein, it is deemed to be granted.

5. A new sub-section should be inserted in Section 29A providing that where the court seeks to reduce the fees of the arbitrator(s), sufficient opportunity should be given to such arbitrator(s) to be heard." (emphasis supplied) 29 The Committee indicated that international arbitration institutions had been critical of the setting up of timelines for conducting international arbitrations. International arbitral institutions with their own machinery for case management were of the view that they did not require the monitoring of timelines by the intervention of the court. The

Committee also noted that in other jurisdictions, timelines for arbitral proceedings are usually agreed by the parties themselves in accordance with the nature and complexity of the dispute. The intervention of the court in the extension of timelines was criticized by arbitral institutions and eventually led to the formulation of the amended provisions of Section 29A which have expressly kept international commercial arbitrations outside the purview of the mandatory timelines provided in Section 29A. Hence, in terms of the amended provisions of Section 29A, arbitral tribunals in international commercial arbitrations are only expected to make an endeavor to complete the proceedings within twelve months from the date of competition of pleadings and are not bound to abide by the time limit prescribed for domestic arbitrations.

30 Having clarified that the 2019 Amendment Act has excluded international commercial arbitrations from the statutorily prescribed mandatory time limits, the question arises whether the amended Section 29A would apply prospectively or retrospectively.

31 The provisions of Section 29A, as introduced by Act 3 of 2016, were prospective in nature by virtue of Section 26 of the 2015 Amendment Act. In terms of Section 26, Section 29A was introduced with effect from 23 October 2015 and applied to all arbitration proceedings that commenced on or after 23 October 2015. Section 26 of the 2015 Amendment Act read as follows:

> "26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

32 In Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd,11 a two Judge Bench of this Court while dealing with the construction and applicability of Section 26 of the 2015 Amendment Act in relation to arbitration proceedings and / or legal proceedings in connection with such arbitration proceedings, inter alia, observed in a footnote that Section 29A was procedural in nature. However, this Court stated that Section 29A created new obligations in respect of a proceeding which had already commenced since it laid down a strict timeline for rendering an arbitral award for the first time in the framework of the Arbitration Act (emphasis supplied). This Court clarified:

> "Section 29A of the Amendment Act provides for time limits within which an arbitral award is to be made. In Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602 at 633, this Court stated:
>
> "(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.
>
> (iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

> (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." It is, inter alia, because timelines for the making of an arbitral award have been laid down for the first time in Section 29A of the (2018) 6 SCC 287 Amendment Act that parties were given the option to adopt such timelines which, though procedural in nature, create new obligations in respect of a proceeding already begun under the unamended Act. This is, of course, only one example of why parties may otherwise agree and apply the new procedure laid down by the Amendment Act to arbitral proceedings that have commenced before it came into force."

33 Procedural law establishes a mechanism for determining rights and liabilities of a party and a machinery for enforcing them. 12 Generally, procedural laws are presumed to be retrospective, unless there is a clear indication that such was not the intention of the legislature,13 or the procedural law imposes new obligations qua transactions already concluded or creates new rights or liabilities. 14 34 The 2019 Amendment Act does not contain any provision equivalent to Section 26 of Act 3 of 2016 evincing a legislative intent making the application of the amended provision prospective. The amended provisions of Section 29A, in terms of which the arbitral tribunal has to endeavour to dispose of the proceedings in an international commercial arbitration as expeditiously as possible within a period of twelve months from the completion of the pleadings are remedial in nature. The amended provision has excepted international commercial arbitrations from the mandate of the twelve- month timeline which governs domestic arbitrations. The amendment is intended to meet the criticism over the timeline in its application to international commercial arbitrations. The amendment is remedial in that it carves out international commercial arbitrations from the rigour of the timeline of six months. This lies within the domain of the arbitrator and is outside the purview of judicial intervention. The removal of the mandatory time limit for making an arbitral award in the case of an international commercial arbitration does not confer any rights or liabilities on any party. Since Thirumalai Chemicals Ltd v. Union of India (2011) 6 SCC 739 Jose Da Costa and Anr. v. Bascora Sadasiva Sinai Narcornim, (1976) 2 SCC 917; Gurbachan Singh v. Satpal Singh (1990) 1 SCC 445; Rajendra Kumar v. Kalyan (D) by Lrs, (2000) 8 SCC 99 Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 Section 29A(1), as amended, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e., 30 August 2019. 35 We may notice certain judgments of the High Courts on the provisions of Section 29A which have been adverted to during the course of oral submissions. Those decisions are:

> i. A decision of a Single Judge of the High Court of Delhi dated 23 January 2020 in Shapoorji Pallonji & Co. Pvt. Ltd. Vs Jindal India Thermal Power Ltd.;15 ii. A decision of a Single Judge of the Delhi High Court dated 21 July 2020 in ONGC Petro Additions Ltd. vs Ferns Construction Co. Inc.;16 and iii. The decision of the Chief Justice of the High Court of Judicature for Orissa at Cuttack dated 11 December 2020 in M/s SARA International Pvt. Ltd. Vs Southern Eastern Railways & Anr.17

36 In Shapoorji Pallonji, the Delhi High Court had held that amended Section 29A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitrations as

on the date of the amendment. However, a coordinate bench in MBL Infrastructures Ltd v. Rites Ltd.18 held that the amended Section 29A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji. Finally, the Delhi High Court in ONGC Petro Additions settled the controversy and reiterated the position of law as laid down in Shapoorji Pallonji. The Court, inter alia, stated that Section 29A(1) shall be applicable to all pending arbitrations seated in India as on August 30, 2019 and commenced after October 23, 2015, and there is no strict time line prescribed to the proceedings which are in nature of international commercial OMP (Misc) (Comm.) No 512/2019 OMP (Misc) (Comm) 256/2019 OMP (Misc) (Comm) 56/2020, as decided on 10 February 2020 arbitration as defined under the Act, seated in India.

37 Consistent with the amended provisions of Section 29A, the sole arbitrator in the present case would be acting within his domain and jurisdiction to decide upon any further extension of time beyond what is originally stipulated at the meeting which was held on 21 March 2018. The sole arbitrator may issue appropriate procedural directions for extension of time while at the same time endeavoring an expeditious conclusion of the arbitration.

38 The Miscellaneous Application and the Interlocutory Application shall accordingly stand allowed in the above terms.

39 Pending applications, if any, stand disposed of.

…. . .. . … … … … … . .. . CJI [Dr Dhananjaya Y Chandrachud]
…….J. [Pamidighantam Sri Narasimha] New Delhi;

January 05, 2023.

-GKA-