

Religare Finvest Limited vs Widescreen Holdings Private Limited ... on 4 April, 2024

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision:4

+ O.M.P. (T) (COMM.) 27/2024, I.A.7151/2024

RELIGARE FINVEST LIMITED

Through: Mr. Ashish Dholakia, Sr.
with Mr. Vipin Tyagi and
Priyamvada Mishra, Advoc

versus

WIDSCREEN HOLDINGS PRIVATE LIMITED AND ORS

Through: ...

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+ O.M.P. (T) (COMM.) 28/2024, I.A.7152/2024

RELIGARE FINVEST LIMITED

Through: Mr. Ashish Dholakia, Sr.
with Mr. Vipin Tyagi and
Priyamvada Mishra, Advoc

versus

ASIAN SATELLITE BROADCAST PRIVATE LIMITED AND
ORS

Through: Mr. Aman Raj Gandhi, Ms.
Bajaj and Ms. Ojasvi Sha
Advocates.

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+ O.M.P. (T) (COMM.) 29/2024, I.A.7153/2024

RELIGARE FINVEST LIMITED

Through: Mr. Ashish Dholakia, Sr.
with Mr. Vipin Tyagi and

Signature Not Verified
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By:VIKAS ARORA
Signing Date:15.04.2024
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O.M.P. (T) (COMM.) 27/2024, O.M.P. (T) (COMM.) 28/2024,
O.M.P. (T) (COMM.) 29/2024 & O.M.P. (T) (COMM.) 30/2024

Priyamvada Mishra, Adv

versus

EDISONS INFRAPOWER AND MULTIVENTURES PRIVATE
LIMITED AND ANR.

Through: Mr. Aman Raj Gandhi, Ms.
Bajaj and Ms. Ojasvi Sh
Advocates.

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+ O.M.P. (T) (COMM.) 30/2024, I.A.7154/2024
RELIGARE FINVEST LIMITED

Through: Mr. Ashish Dholakia, Sr
with Mr. Vipin Tyagi an
Priyamvada Mishra, Advo

versus

KONTI INFRAPOWER AND MULTIVENTURES PRIVATE
LIMITED AND ORS

Through: Mr. Aman Raj Gandhi, Ms
Bajaj and Ms. Ojasvi Sh
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the „Act), has been filed on behalf of the petitioner, to declare that the learned Sole Arbitrator is now de jure unable to perform her functions under Section 14(1)(a) of the Act and to appoint a substitute Arbitrator under Section 15(2) of the Act,.

2. It is submitted in the Petition that the respondent No. 1 owes to the petitioner cumulative amount of Rs.12,44,52,240/-, in the aforementioned three Petitions, in terms of a Loan Agreement dated 15.02.2014. The respondent Nos. 2 and 3 are security providers for the Debt. The Loan was to be repaid on the quarterly interest payment @14% p.a. and the Principal amount was payable at the end of the tenure.

3. According to the petitioner, the respondent No. 1 failed to repay the Debt and hence, the Arbitration proceedings were initiated against the respondents on 07.05.2019, by invoking the Arbitration Clause 16.1 of the Loan Agreement. Initially, the Petition under Section 9 of the Act, had been filed by the petitioner for appointment of an Arbitrator but subsequently, it was withdrawn and the parties appointed the Sole Arbitrator, as agreed by them. The Arbitration proceedings commenced inter se the parties, before the learned Sole Arbitrator.

4. The respondent No. 1 first delayed filing of its Statement of Defence under one pretext or the other and thereafter, challenged the jurisdiction of the Arbitral Tribunal vide application under Section 16 of the Arbitration Act dated 21.09.2019, on the sole basis that the Loan Agreement was purportedly insufficiently stamped as per the Maharashtra Stamp Act, 1958.

5. The learned Sole Arbitrator vide Order dated 22.10.2020 allowed the application under Section 16 and the Arbitration proceedings were adjourned sine die.

6. The Order was challenged by the petitioner before this Court, under Section 37 of the Act vide ARB. A. (COMM.) 6-9/2021. The Appeals were allowed vide common Order and Judgment dated 10.01.2022 directing the learned Sole Arbitrator to examine if the Instruments are sufficiently stamped under Article 5(c) of Schedule IA of the Indian Stamp Act, 1899, as applicable to Delhi.

7. The respondents vide SLP(C) No. 6826-6829/2022, challenged the this Judgment dated 10.01.2022 before the Hon'ble Supreme Court of India, which dismissed the same vide Order dated 22.04.2022, by observing that the Arbitrator may take a call about the impounding of the documents provided it is produced by the Claimant.

8. The respondents filed Miscellaneous Application Nos. 899-902/2022 in SLP(C) 6826-6829/2022, which were also disposed of vide Order dated 20.05.2022, with the directions that as and when the original document is produced before the learned Arbitrator, she shall take the call whether the original document produced is on proper stamp duty, in accordance with law.

9. The respondents again filed Miscellaneous Application Nos. 1547- 1550/2022 in the same SLPs seeking clarification whether the Maharashtra Stamp Act, 1958 or the Indian Stamp Act, 1899, would be applicable to the Loan Agreement. Vide Order dated 19.09.2022, the Apex Court dismissed the Applications, leaving this question to be decided by the learned Arbitrator.

10. In the meanwhile, , the respondents filed an Application under Section 33, 35 and 38 of the Indian Stamp Act, 1899, on 26.07.2022 seeking the directions to be issued to the Claimant to deposit and pay the penalty, in terms of Section 35 Proviso (a) of the Indian Stamps Act, 1899 and allowed the Claimant to present the Loan Agreement and the Facility Schedules into evidence in terms of Section 35 Proviso (a) and also to pass necessary Orders under Section 38 of the India Stamps Act, 1899; consequential to such orders or in lieu thereof, pass necessary orders for stamping and endorsement of the Loan Agreement. The said application is still pending.

11. On 17.01.2023, the Application seeking termination of Arbitration proceedings in accordance with Section 32(2)(c) of the Act, was filed by one of the other Zee Group Companies, on the ground that the petitioner was not producing the Original Loan Agreement. However, this Application was rendered infructuous since the Original Loan Agreement was produced before the learned Arbitrator.

12. The petitioner has asserted that since 2023, no effective hearing has taken place in the Arbitration proceedings under Reference. On 17.08.2023, during the Case Management hearing, the parties incorrectly calculated the time in which the Arbitration proceedings were to be concluded. Various dates were fixed for taking up the Arbitration proceedings. In the meanwhile, the respondents were directed to pay a further fee of Rs.9,00,000/- towards the part Arbitral fee.

13. Thereafter, the Arbitration proceedings were listed on 27.09.2023 but the hearing could not take place on account of the unavailability of the learned Sole Arbitrator. The matter was again listed on 20.10.2023 and thereafter on 14.11.2023, but no effective proceedings took place.

14. The petitioner has submitted that Section 29A (1) of the Act provides that the Award shall be made within 12 months from the date of completion of the pleadings. If the proceedings are not concluded within the prescribed period, the parties can, with mutual consent, extend the mandate by the period not more than six months, under Section 29A(3). Where the Award is not made even in the extended period, the mandate of the Arbitrator shall terminate unless it is extended by the valid Order of the Court. It is submitted that in the present case, the mandate of the learned Arbitrator expired in October, 2022 and the extended period expired in April, 2023 in accordance with Orders dated 23.03.2020, 08.03.2020, and 23.09.2021 passed by the Apex Court in MA No. 21/2022 in MA 665/2022 in *Suo Motu Writ Petition (C) 3/2022* dated 10.01.2022. As per Section 29A sub-Clause (4), the learned Sole Arbitrator has become *functus officio* since April, 2023. Thereafter, no effective Award can be passed in the Arbitration proceedings. The learned Arbitrator has become *de Jure* or *de facto* unable to perform his functions as Arbitrator under Section 14(1)(a) of the Act.

15. Therefore, a prayer is made to declare that the Sole Arbitrator has become *de Jure* unable to perform his functions under Section 14(1)(a) of the Act and to substitute the Arbitrator under Section 15(2) of the Act for adjudication of the disputes.

16. Submissions heard.

17. Section 14 of the Act delineates the circumstances in which there is Failure or impossibility of the Arbitrator to act. Section 15 of the Act provides for the Termination of mandate and substitution of Arbitrator. From conjoint reading of Sections 14 and 15, it is evident that the mandate of an Arbitrator shall terminate, if he becomes *de jure* or *de facto* unable to perform his functions or he withdraws from his office or the parties agree to the termination of his mandate.

18. In both the situations, it is only the mandate of the Arbitrator which comes to an end and, therefore, provision is made for the appointment of substitute Arbitrator who can continue from the stage where the earlier Tribunal left the proceedings. For this, reference may be made to the decision in *Chemical Sales Corporation v. A & A Laxmi Sales and Service Private Limited*, 2011 SCC OnLine Del 3847, wherein the Co-ordinate Bench of this Court observed that the termination of arbitral proceedings is different from the termination of the mandate of Arbitrator. The mandate of the Arbitrator depending upon the facts and circumstances of the case, may come to an end, but not the arbitral proceedings. For example, if the parties to the Arbitration Agreement had fixed a period of six months from the completion of arbitral proceedings and the Arbitral Tribunal fails to do so, the mandate of the Arbitral Tribunal shall come to an end, but not the arbitration proceedings and in such eventually, the substitute Arbitrator, if appointed, shall continue with the arbitration proceedings from the stage where it had been left by the earlier Arbitrator.

19. Similarly, in the decision in the case of *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*, 2017 SCC OnLine SC 1210, the Supreme Court highlighted that in the case of termination of arbitral proceedings, the proceedings itself do not survive and there is no scope for the appointment of a substitute Arbitrator. Whereas in the case of termination of the mandate of the Arbitrator, the proceedings survive thereby leaving the scope for appointment of a substitute

Arbitrator."

20. The facts of the present case reflect that the learned Sole Arbitrator was appointed by the parties in May, 2019 and the Statement of Defence was filed by the respondent on 21.08.2019. The pleadings were thus, completed and the period of 12 months for the completion of the trial by the learned Arbitrator, commenced. It has been detailed above that an Application under Section 16 of the Act, got filed by the respondents before the learned Sole Arbitrator on 21.08.2019, which was decided by the learned Arbitrator vide Order dated 22.10.2020. It is pertinent to observe that COVID-19 Pandemic struck from March 2020, despite which during the COVID period, the application had been disposed of by the learned Arbitrator. It may seem that there was a delay in disposal of the Application, but it was purely of account of complete Lockdown and supervening circumstances which were beyond the control of the ld. Arbitrator.

21. The Appeal under Section 37 got filed against this Order by the petitioner itself, before this Court, which was finally decided on 10.01.2022. This did not meet the approval of the Respondents who preferred SLP on 22.04.2022 and thereafter, Miscellaneous Applications were filed on two occasions by the respondents, to seek clarification of the Order dated 22.04.2022, which had been finally disposed of. Therefore, the time taken from October, 2020 till July, 2022 can also not be attributed to the Ld. Arbitrator. The issue of a valid Arbitration Agreement which is duly stamped is the pre-requisite for commencement of the arbitration proceedings and whatever time taken to bring the Arbitration Agreement on record, cannot in any manner be attributed as delay on the part of the Ld. Sole Arbitrator.

22. In the interim, the respondents have filed an Application under Section 33, 35 and 38 of the Indian Stamps Act, 1899, on 26.07.2022, which is pending till date. However, interestingly, the Ld. Arbitrator and the parties had Case Management hearing on 17.08.2023 and the dates were also fixed till 14.11.23. However, the Ld. Arbitrator again faces a procedural hurdle of her mandate having expired and no steps were taken by either party to seek extension of mandate of the Arbitrator by moving an appropriate application. Instead, the present Application has been filed for substitution claiming that the Ld. Arbitrator has become de jure incapable to continue, as the mandate of the Tribunal has expired.

23. From the averments made in the Petition itself, there is nothing to show that the learned Arbitrator has failed to perform her duties. The grievance of the petitioner that the Arbitration proceedings have not progressed substantively, is largely on the ground of the application filed under Section 16 of the Act, by the respondents and the time taken in disposal of the application finally. No inaction in these circumstances can be attributed to the learned Sole Arbitrator. The Ld. Arbitrator cannot be said to have de facto or de jure incapable of acting as the Arbitrator, in terms of Section 14 of the Act. The other circumstances of withdrawal or termination by mutual consent as stated in S.15 of the Act, are also not attracted.

24. As already discussed above, there is no averment made by the petitioner shows that the learned Arbitrator has been recalcitrant in conducting the arbitral proceedings; rather it is shown that the said proceedings have been diligently conducted by the learned Arbitrator. The facts as detailed by

the parties, show that the application under Section 16 of the Arbitration and Conciliation Act, filed on 21.08.2019, got disposed of on 22.10.2020 by the learned Arbitrator. Thereafter, it is the parties, who have gone to the Court to challenge the Orders, which has taken about so many months. It is the respondent, which has filed three clarificatory Applications before the Apex Court for clarification of the Order. In these circumstances, the time so consumed by the parties in conducting the proceedings and challenging the Order is not attributable to the learned Arbitrator, in any manner.

25. In this situation, there exists no circumstance to hold that the learned Arbitrator has become de Jure or de facto incapable of performing his function as a learned Arbitrator and there exists no ground for substitution of the Ld. Sole Arbitrator.

26. Pertinently, even though the mandate of the learned Arbitrator had expired, the parties continued to pursue their matter not only in the Hon'ble Supreme Court but also before the learned Arbitrator and admittedly appeared on 17.08.2023 for fixing the schedule of dates and thereafter till 14.11.2023.

27. In this backdrop, the pertinent question arises that is what should be done now when the mandate of the Ld. Tribunal stands expired.

28. Necessarily, once period of 12 months and six months by mutual consent expired, the parties were required to approach the Court under Section 29A of the Act, to seek the extension of the mandate of the learned Arbitrator. Admittedly, neither the petitioner nor the respondent had filed any Petition under Section 29A of the Act. Instead, the present application for termination and appointment of substitute Arbitrator, has been filed on behalf of the petitioner.

29. The respondent on specifically being asked, stated that he has already spent huge amounts and does not intend to abandon the present Arbitration proceedings. The petitioner by moving the present application, has also expressed its intention that the Arbitration proceedings may be continued. Once it is held that there is no ground for substitution of learned Sole Arbitrator, the only necessary corollary that follows is that the mandate of the learned Arbitrator, has to be necessarily extended to enable the Arbitrator to complete the Arbitral proceedings.

30. Admittedly, both the parties have not filed their application under Section 29A seeking the extension of the mandate of the learned Arbitrator.

31. It may be pertinent to reproduce the relevant Section of 29A of the Act. The Clause 4, 5, 6 and 7, which reads as under:-

"S.29A:

...(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period

so specified, extended the period:

Provided that.....

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

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

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal."

32. From the comprehensive reading of the various Clauses of Section 29A, it emerges that in case the Award is not pronounced within the given timeframe, the Court may extend the mandate to enable the pronouncement of the Award. Clause 5 further provides that the extension of the period referred to in Clause 4, may be on the application of any party and time as sufficient for completion of the Arbitral proceedings, may be granted subject to such terms as the Court may deem appropriate. While Clause 4 confers power of extension, Clause 5 states that the extension may be on an application. The language of these two sub-clauses make it amply clear that though either party or both the parties may seek extension of mandate, but moving of an Application is neither a pre-condition nor is the discretion of the Court under Clause 4 to extend the mandate of the learned Arbitral Tribunal is predicated on the moving of an application as Clause 5 specifically uses the word "may". Therefore, there is no prohibition for the Court to extend the mandate if required to complete the arbitral proceedings.

33. Considering that both the parties have already invested their time and energy for around four years and are interested to continue with the Arbitration, to leave the parties in a limbo at this stage and to wait for an application under S.29A of the Act to be moved, would not only be doing damage to the explicit provision of S.29A of the Act which does not circumscribe the jurisdiction of the Court to extend the mandate by moving an application, but would also be against the very objectives of the Arbitration law of speedy, inexpensive and fair trial by an Arbitral Tribunal.

34. It may thus be concluded that, there is nothing in the Act, which bars the court to extend the mandate by a reasonable time, to enable the learned Arbitrator to conclude the Arbitral proceedings while dismissing the application under Sections 14 & 15 of the Arbitration and Conciliation Act.

35. Furthermore, as already noted above, both the parties want the resolution of their disputes through Arbitration and intend to continue with the proceedings except that the Petitioner had an objection to the continuation of the learned Sole Arbitrator, purely on a premise that there was a delay in the proceedings. The entire proceeding as discussed above shows that the delay, if any, cannot be attributed to the learned Sole Arbitrator.

36. Furthermore, in the opening paragraph itself, the Petitioner has mentioned that this is an Application under Sections 14 and 15 read with Section 29A of the Act. In these circumstances, exercising the jurisdiction under Sections 14 & 15 read with Section 29A of the Arbitration and Conciliation Act, the mandate of the learned Arbitrator is extended till 31.10.2024, for the completion of the Arbitral proceedings.

37. The application is accordingly disposed of.

(NEENA BANSAL KRISHNA) JUDGE APRIL 04, 2024/RS