IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 196 OF 2024

S.S. Trading Company Limited ...Petitioner

Versus

S.N.C. Trading Company ...Respondent

Mr. Aliabbas Delhiwala *a/w Ms. Ankita Karmokar i/b L.R. & Associates for Petitioner.*

Mr. Makarand M. Kale *for Respondent.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**
RESERVED ON: **MAY 5, 2025**
PRONOUNCED ON: **NOVEMBER 17, 2025**

JUDGEMENT:

Context and Factual Background:

1. This is a Petition purporting to invoke Section 11 and Section 15 of the Arbitration and Conciliation Act, 1996 ("***the Act***") in connection with disputes and differences relating to a 'Business Agreement' dated April 22, 2019 (***"Agreement"***) between the Petitioner, S.S. Trading Company Limited and the Respondent, S. N. C. Trading Company. The disputes and differences under the Agreement have been

subjected to arbitration which was conducted by a Learned Sole Arbitrator until June 2, 2023.

2. The Petitioner contends that the Arbitrator has abandoned the arbitration proceedings since June 2, 2023 by simply refusing to convene leading to the expiry of mandate as well as making out a case for intervention by this Court. Submissions in the matter were made extensively in reliance upon Section 14 of the Act although there is not a whisper of the provision in the pleadings. This has been dealt with later in this judgement. Originally filed as an Application on the Original Side of this Court, these proceedings were shifted as a Petition to the Appellate Side.

3. The following factual matrix will be relevant for purposes of these proceedings:-

(a) The Petitioner is a Carrying and Forwarding Agent and a *"*Super Stockist*"*, stocking products manufactured and marketed by multiple companies engaged in fast moving consumer durables business;

(b) The Respondent is a Consignee Agent who stocks and distributes the products supplied by the Petitioner. The Agreement contains an arbitration agreement in Clause 16;

(c) The Learned Arbitrator entered reference on September 3, 2022 and held a preliminary meeting on September 18, 2022, which the Respondent did not attend;

(d) On October 3, 2022, the Petitioner filed a Statement of Claim. The claim was essentially that the Respondent had defrauded the Petitioner of Rs. ~1.05 crores;

(e) On November 5, 2022, the Learned Arbitral Tribunal granted certain interim reliefs to secure the interests of the Petitioner by directing the freezing of certain bank accounts, recording a strong *prima facie* case in favour of the Petitioner. The Learned Arbitral Tribunal recorded that the Respondent had deliberately chosen not to attend the arbitration;

(f) On January 14, 2023, the Respondent indeed attended the arbitration proceedings for the first time. The Learned Arbitral Tribunal has explicitly recorded that in his view the Respondent was guilty of intentionally skipping the

meetings and directed that apart from the Respondent's share of arbitration fees he would also be liable to pay "*some fine*". In this regard, costs in the sum of Rs.10,000/- was fixed by the Learned Arbitrator and it was indicated that in all future hearings, there would be fee of Rs.10,000/- per party per sitting. With such computation, the Respondent was directed to pay a total sum of Rs.40,000/- failing which further costs would be imposed on the Respondent. The next hearing was fixed for March 25, 2023;

(g) The next meeting was held on March 25, 2023, when the Learned Arbitral Tribunal recorded that the Respondent has chosen not to file a Statement of Defence and adjourned the matter to April 8, 2023. The contention of the Respondent that he had not receive any information about the proceedings was rejected by the Learned Arbitral Tribunal on April 8, 2023;

(h) The Respondent did not comply with the directions and did not file a Statement of Defence by the next date. The Respondent sought an adjournment of the hearing scheduled for April 8, 2023. That apart, he filed an Application to

withdraw the earlier order dated November 5, 2022 imposing a fine of Rs.40,000/- on the Respondent.

(i) Inexplicably, on April 20, 2023, the matter took a new turn. The Learned Arbitral Tribunal directed that "*since the Defendant [Respondent] is not turning up, and with the costs increasing day-by-day, it is incumbent on the Claimant [Petitioner] to submit an amount of penalties due to the Defendant on the next date of hearing of this tribunal, or a sum of Rs. 20,000/- per hearing for each next hearing*". Further, the Learned Arbitral Tribunal ruled that "*This Tribunal stands suspended till funds are arranged to support the process. For this reason, there is no further date of hearing of this Tribunal this time. It shall be given as and when there is arrangement of funds*";

(j) On May 6, 2023 the Petitioner recorded that the total fee payable was Rs.2 Lakhs of which more than 50% of the agreed fees had already been paid, i.e., Rs.90,000/- plus Rs.15,000/-. The Petitioner objected to the costs imposed on the Respondent being forced to be paid by the Petitioner. The Petitioner also sought fast tracking of the proceedings for

conduct through an on-line hearing since the Arbitrator had shifted to Delhi and also protested that the Arbitral Tribunal could not unilaterally increase the fees without the consent of the parties;

(k) On May 30, 2023, the Petitioner agreed to pay the amounts claimed by the Learned Arbitral Tribunal under protest and requested the Tribunal to fix the hearing so that the matter could progress further. On June 2, 2023 the Petitioner reiterated that it would be willing to pay the Learned Arbitral Tribunal but insisted that the Learned Arbitral Tribunal must conduct the hearing, and if the next date of hearing were not fixed, the Learned Arbitral Tribunal would be deemed to have withdrawn from the mandate;

(l) On June 2, 2023 the Learned Arbitral Tribunal demanded an apology from the Petitioner;

(m) Two months later, on August 21, 2023, the Petitioner wrote to the Respondent seeking consent for appointment of a substitute Arbitrator.

(n) On August 28, 2023, the Respondent replied saying he had not requested for substitution and therefore he would not consent to the same and he would also not be willing to pay fees of the Arbitrator. On September 2, 2023 the Respondent once again reiterated that he would be unwilling to pay fees of the substitute Arbitrator; and

(o) Thereafter, this Petition came to be filed in October 2023 and has been on the docket of this Court since then.

Analysis and Findings:

4. I have examined the record. This Petition has been filed under Section 11 of the Act read with Section 15 of the Act. While it is a composite Petition, the Section 11 jurisdiction indeed lies with this Court. Section 15 (1)(a) of the Act provides that the mandate of the arbitral tribunal shall terminate where the arbitrator "*withdraws from office for any reason*". Section 14(1)(a), which was also pressed into service during arguments, provides for termination of the mandate of the arbitrator, if for reasons other than *de facto* or *de jure* inability to act as arbitrator, the arbitrator "*fails to act without undue delay*". Section 15 is a further extension of Section 14, and provides for two other distinct circumstances in which, the arbitrator's mandate would stand

terminated – when he withdraws from office; or pursuant to an agreement between the parties. Evidently, the parties do not have any agreement to substitute the arbitrator.

5. Therefore, the question that arises is whether as an answer to the mixed question of fact and law, the Learned Arbitrator has withdrawn from office within the meaning of the term under Section 15 and also whether the jurisdiction of the Section 11 Court has been attracted for any other reason.

6. It is in this context that one cannot miss the position under Section 29A of the Act, which provides for termination of the mandate on the expiry of twelve months from the completion of pleadings under Section 23(4) of the Act. The parties have autonomy to extend the period further by six months but if that extended deadline is also missed or if the parties do not have consent on such extension by six months, "*the mandate of the arbitrator(s) shall terminate*" unless there is an extension granted by the Court.

7. In the facts of this case, multiple deadlines for filing of the Statement of Defence have been missed by the Respondent. The Learned Arbitral Tribunal even imposed a *"fine"* in this regard. Under Section 23(4), pleadings *shall be completed within a period of six*

months from the date the arbitrator received written notice of his appointment. The Learned Arbitral Tribunal's order dated April 20, 2023, which is the order by which arbitration was suspended, the Learned Arbitral Tribunal has recorded that the Statement of Defence was belatedly filed on April 15, 2023, and that the Learned Arbitral Tribunal would take a decision on it only when proceedings resume, which will take place upon payment of the amounts directed.

8. The Learned Arbitral Tribunal entered reference on April 22, 2019. If one were to take this date, six months would end on October 21, 2019, which would be the deadline to complete pleadings including the Statement of Defence. The Statement of Defence was filed on April 15, 2023 and the Learned Arbitral Tribunal was yet to admit this into the record when it suspended proceedings. Even assuming the Statement of Defence were accepted, twelve months from that date would be April 14, 2024 and the mandate would stand expired by reason of Section 29A of the Act. While there may have been an impasse since then, with a war of words between the arbitrator and the Petitioner making matters worse, and the arbitrator neither resigning nor conducting the proceedings, evidently, the mandate stood terminated by operation of law.

9. A careful reading of the material on record would indicate that the Petitioner in fact sought striking out the defence of the Respondent for not filing the Statement of Defence within the time permitted by the Learned Arbitral Tribunal and for not obeying the directions issued earlier. It was requested that the Respondent would waste further time of the Learned Arbitral Tribunal and the Petitioner would continue to bear the expenses involved without any end in sight. The Learned Arbitral Tribunal did not take a view on this request either.

10. The Learned Arbitral Tribunal could have resigned having been unhappy with the fee default. This step was not taken. The Learned Arbitral Tribunal kept the proceedings suspended unless the unilaterally revised fees are paid. The parties did not consent to the enhanced fee. The Learned Arbitral Tribunal could have also continued with the arbitration to eventually exercise a lien on the award under Section 39 of the Act. Doing neither, and keeping the proceedings in suspended animation, also expired with the expiry of the mandate by operation of Section 29A of the Act. This would leave the recourse to Section 11 to appoint an arbitrator, which is the provision invoked by the Petitioner.

11. Indeed, the Learned Arbitral Tribunal indicated that the Tribunal is "*in no position to carry out arbitration proceedings at its own costs*". The Learned Arbitral Tribunal has recorded that the "*quoted price of the arbitration being too low in the beginning itself*", and that it would be difficult to carry on further in this fashion. While this would *prima facie* indicate withdrawal from office under Section 15 of the Act, effectively, the proceedings were adjourned *sine die* until funds were arranged by the Petitioner and while waiting for this contingency, the mandate has expired by efflux of time.

12. A few other provisions must be noticed.

13. Section 25 of the Act which deals with default of a party, provides that if the Statement of Defence is not filed within the deadline stipulated by the Arbitral Tribunal, the proceedings shall continue without treating the failure to file the defence, in itself as an admission of the allegations in the Statement of Claim. The Arbitral Tribunal has the discretion to treat the right of the Respondent to file such Statement of Defence as having been forfeited. This discretion too was not exercised, and the proceedings were simply kept under suspension.

14. Under Section 25(c) of the Act, if "*a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal*

may continue the proceedings and make the arbitral award on the evidence before it". With the suspension of arbitration, this was not done.

15. Under Section 39 of the Act, it is also provided that the Arbitral Tribunal would have a lien on the arbitral award for any unpaid costs in the arbitration. Under Section 39(2) of the Act, it is provided that in case the Arbitral Tribunal refuses to deliver its award except on payment of costs demanded by it, the Court will on an application made in this behalf, order that the Arbitral Tribunal shall deliver the Arbitral Award to the applicant on payment of the costs demanded in Court, and could after enquiry, further order that out of the money so paid into Court such sum as considered by the Court to be reasonable shall be paid to the arbitrator.

Relevant Case Law :

16. In ***ONGC vs. Afcons***[1], the Supreme Court held thus:

> *187.1* ***Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions, i.e., the arbitrators***

[1] *Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV – 2024 (4) SCC 481*

cannot be a judge of their own private claim against the parties regarding their remuneration. *However, the Arbitral Tribunal has the discretion to apportion the costs (including arbitrators' fee and expenses) between the parties in terms of Section 31(8) and Section 31-A of the Arbitration Act and also demand a deposit (advance on costs) in accordance with Section 38 of the Arbitration Act.* ***If while fixing costs or deposits, the Arbitral Tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators.*** *The* ***Arbitral Tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under Section 39(1)***. *The party can approach the Court to review the fees demanded by the arbitrators if it believes the fees are unreasonable under Section 39(2);*

187.2 Since this judgment holds that the fees of the arbitrators must be fixed at the inception to avoid unnecessary litigation and conflicts between the parties and the arbitrators at a later stage, this Court has issued certain directives to govern proceedings in ad hoc arbitrations in Section C.2.4 (See paras 125 to 129);

187.3 The term "sum in dispute" in the Fourth Schedule of the Arbitration Act refers to the sum in dispute in a claim and counterclaim separately, and not cumulatively. Consequently, arbitrators shall be entitled to charge a separate fee for the claim and the counterclaim in an ad hoc arbitration proceeding, and the fee ceiling contained in the Fourth Schedule will separately apply to both, when the fee structure of the Fourth Schedule has been made applicable to the ad hoc arbitration;

187.4 The ceiling of Rs 30,00,000 in the entry at Sl. No. 6 of the Fourth Schedule is applicable to the sum of the base amount (of Rs

19,87,500) and the variable amount over and above it. Consequently, the highest fee payable shall be Rs 30,00,000; and

187.5 This ceiling is applicable to each individual arbitrator, and not the Arbitral Tribunal as a whole, where it consists of three or more arbitrators. Of course, a sole arbitrator shall be paid 25% over and above this amount in accordance with the Note to the Fourth Schedule.

[Emphasis Supplied]

17. In view of the law declared by the Supreme Court it is clear that the Learned Arbitral Tribunal's unilateral revision of the fees could at best a proposal. When the parties do not accept it, the Learned Arbitral Tribunal could well resign and refuse to entertain the arbitration. To hold on to it and also not conduct it, would inexorably lead to the time ticking under Section 29A to have its eventual inexorable effect.

Summary of Conclusions:

18. To summarise:

(a) fees chargeable by the Arbitral Tribunal is a matter for the Arbitral Tribunal to agree upon with the parties;

(b) the Arbitral Tribunal may propose the fees to the parties;

(c) if the parties do not accept the fee proposal from the Arbitral Tribunal, the Arbitral Tribunal could well take a view that the arbitration proceedings are not worth its while;

(d) once there is agreement on the fees and the arbitration commences and thereafter there is a default in payment of fees, the Arbitral Tribunal could either resign or proceed with the matter, and eventually exercise the statutory lien on the award;

(e) if neither is done (resignation or proceeding further), a case would be made out to take a view, on appreciation of the facts of the case, that the Arbitral Tribunal is unwilling to complete the arbitration proceedings without undue delay (under Section 14); or that the Arbitral Tribunal has effectively withdrawn from office by doing nothing (under Section 15), based on the specific factual developments in the case;

(f) the Section 29A clock would be ticking in the mean-time, and by sheer efflux of time, the mandate could come to an end; and

(g) in such event, since the arbitration agreement would subsist, a new arbitral tribunal would need to be appointed, leaving all contentions on merits open for the newly appointed arbitral tribunal to consider.

Directions:

19. Therefore, a case has been made out to allow this Petition, which is ***finally disposed of*** in the following terms:-

A] Presolv360, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B] The contact particulars of the Director, Presolv360 are set out below:-

Email id : info@presolv360.com

Contact No. - +91-9820167337

Address: 1st Floor, Esperanca Building, Shahid Bhagat Singh Road, Colaba, Mumbai – 400 001.

Website: www.presolv360.com

C] A copy of this Order will be communicated to Presolv360 by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to Presolv360 along with a copy of this Order;

D] It is clarified that Presolv360 being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the administration of Presolv360.

E] The administration of Presolv360 is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] The parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the administration of Presolv360 and any other particulars as reasonably requested by the administration. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration shall be borne by the parties equally in the first instance, and shall

be subject to any final Award that may be passed by the Tribunal in relation to costs; and

H] The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

20. The substituted Arbitrator shall take over the proceedings from the stage at which they are, and continue with the proceedings.

21. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]