IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL 2024

PRESENT

THE HON'BLE MR. JUSTICE S. G. PANDIT

AND

THE HON'BLE MR. JUSTICE C.M.POONACHA

WRIT PETITION NO.8654 OF 2024 (GM-RES)

BETWEEN:

BUOYANT TECHNOLOGY CONSTELLATIONS PVT.LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
(FORMERLY KNOWN AS
MANTRA TECHNOLOGY CONSTELLATIONS PVT.LTD.,)
HAVING IS REGISTERED OFFICE AT
MANTRI HOUSE, 41, VITAL MALLYA ROAD
BENGALURU-560001
REP. BY ITS AUTHORIZED SIGNATORY
MR. GIRISH GUPTA.

... PETITIONER

(BY SRI. S BASAVARA, SR.ADV. FOR
SRI ANISH ACHARYA, ADV.)

AND:

1. MANYATA INFRASTRUCTURE
DEVELOPMENTS PVT.LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT

NO.9/1, 1ST FLOOR,
CLASSIC COURT
RICHMOND ROAD
BENGALURU-560025
REP. BY ITS MANAGING DIRECTOR.

2. MANYATA REALLTY
A PARTNERSHIP FIRM REGISTERED
UNDER THE INDIAN
PARTNERSHIP ACT, 1932
HAVING ITS REGISTERED OFFICE AT
NO.9/1, 1ST FLOOR,
CLASSIC COURT
RICHMOND ROAD
BENGALURU-560025.

…RESPONDENTS

(BY SRI E OM PRAKASH, SR.ADV. FOR
SRI N VISHWAS & R. MONESHAA, ADV. FOR C/R1 & 2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO I) ISSUE AN APPROPRIATE WRIT/ORDER/DIRECTION QUASHING THE ORDER PASSED BY THE TRIBUNAL DATED 16.03.2024 (ANNEXURE-A); II) ISSUE AN APPROPRIATE WRIT/ORDER/DIRECTION DECLARING THAT THE MANDATE OF THE ARBITRAL TRIBUNAL HAS TERMINATED ON 25.02.2024 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON **26/03/2024** COMING ON THIS DAY, ***S.G.PANDIT J.,*** PRONOUNCED THE FOLLOWING:

O R D E R

Petitioner, who is the respondent before the Arbitral Tribunal is before this Court under Articles 226 and 227 of the Constitution of India questioning Arbitral Tribunal order dated 16.03.2024 posting the proceedings to 21.03.2024 directing the claimants to keep the witness present and to declare that the mandate of the Arbitral Tribunal has terminated on 25.02.2024.

2. Heard the learned senior counsel Sri.S.Basavaraj for Sri.Anish Acharya, learned counsel for petitioner and Sri.E.Om Prakash, learned senior counsel for Sri.N.Vishwas and Ms.Moneshaa, learned counsel for respondents. Perused the entire writ petition papers.

3. Brief facts for deciding the question involved in the writ petition are that, the petitioner and respondents had entered into MOU and also certain

joint development agreements. As there arose certain differences and disputes among the parties, the parties invoked Arbitration Clause initiating Arbitration proceedings to resolve the differences and disputes. The Arbitral Tribunal held its first proceedings on 07.11.2022 and ordered notice to the parties to appear before the Tribunal on 17.11.2022. On 17.11.2022, on hearing the petitioner and respondent, modalities of the proceedings were fixed and the proceedings was adjourned to 05.12.2022 for filing claim statement. It is stated that on 05.12.2022, respondents herein filed claim statement. Thereafter, the proceedings was listed for hearing the I.As filed by the parties and for filing objection statement by the petitioner herein to the claim statement. The petitioner herein filed its objections as well as counterclaim on 27.01.2023. The respondents herein filed its objection to the counterclaim as well as rejoinder on 25.02.2023.

Thereafter, the petitioner herein intended to complete the pleadings by filing surrejoinder and sought extension of time to file surrejoinder. The Tribunal rejected the request of the petitioner to extend the time and proceeded to post the proceedings for issues.

4. At that stage, petitioner filed W.P.No.10091/2023 questioning the order dated 06.05.2023 rejecting its request for extension of time and also seeking leave to file surrejoinder. This Court by order dated 11.05.2023 disposed of the writ petition with liberty to the petitioner to file surrejoinder on 20.05.2023 without seeking any extension of time, with an observation that not to treat the said order as precedent nor will it have any precedential value. Thereafter, the petitioner filed its surrejoinder on 20.05.2023.

5. In the meanwhile, proceedings under Section 95 of Insolvency and Bankruptcy Code, 2016 (for short,

'IBC') was initiated against the petitioner before National Company Law Tribunal (for short, 'NCLT') and on 21.10.2023, notice was issued. The respondent filed W.P.No.26977/2023 challenging the NCLT proceedings. Initially on 07.12.2023, this Court stayed the proceedings before the NCLT and subsequently this Court by order dated 20.12.2023 stayed Arbitral Proceedings also. On 06.03.2024, the said writ petition questioning the NCLT proceedings was allowed. The interim order of stay of the Arbitral Proceedings was in force for a period of 77 days.

6. The petitioner filed three memos dated 27.02.2024, 11.03.2024 and 11.03.2024 before the Arbitral Tribunal stating that the Tribunal has no mandate in view of Section 29A(4) of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), hence prayed to terminate the proceedings. Permitting the respondents to file objection to the said memos,

proceedings was adjourned to 21.03.2024. Challenging the said proceedings dated 16.03.2024 petitioner is before this Court in the present writ petition. The Arbitral Tribunal subsequently by order dated 21.03.2024 rejected the above three memos holding that the parties completed filing of their pleadings in the Arbitral Proceedings on 20.05.2023 and twelve months would commence from the said date. Further, it observed that period of stay of proceedings in W.P.No.26977/2023 requires to be excluded.

7. Learned senior counsel Sri.S.Basavaraj would contend that in terms of Section 29A of 1996 Act, proceedings commenced on 25.02.2023 the date on which the respondents/claimants filed its objection to counterclaim as well as rejoinder. It is submitted that in terms of Section 23 of 1996 Act, pleading before the Arbitral Tribunal would include claim statement and objections to claim statement/counterclaim and

objections to counterclaim. Pleadings would not include statement of rejoinder or surrejoinder. Learned senior counsel referring to Section 29A of 1996 Act would submit 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 completion of the pleadings under Sub-section (4) of Section 23 of 1996 Act. As the pleadings i.e., filing of claim statement, objections, counterclaim and objections to counterclaim was completed on 25.02.2023, one year period to pass award would commence from the said date. Learned senior counsel would submit that one year period from 25.02.2023 has come to an end on 24.02.2024, as such the Arbitral Tribunal has no jurisdiction to continue the proceedings. It is also submitted that none has obtained extension of time as required under Section 29A(4) and (5) of 1996 Act.

8. Learned senior counsel further contends that Code of Civil Procedure, 1908 and the Evidence Act, 1872 are not applicable to arbitral proceedings and its provisions are excluded to the proceedings under the 1996 Act. Since the proceedings before the Arbitral Tribunal got terminated by lapse of time, the Arbitral Tribunal could not have proceeded further and could not have directed the petitioner to be present for further proceedings. Thus, it is prayed for allowing the writ petition.

9. Per contra, learned senior counsel Sri.E.Om Prakash for respondents refuting the allegations of the petitioner would submit that objections to counterclaim of the petitioner and rejoinder by respondents were filed before the Arbitral Tribunal on 25.02.2023. He submits that normally pleadings would not include rejoinder, but if the rejoinder is filed with the permission of the Court, then it would form

part of the proceedings. It is submitted that since the petitioner herein who is the respondent before the Arbitral Tribunal with the permission of this Court or liberty provided by this Court, filed surrejoinder on 20.05.2023, as such the Tribunal rightly observed that in terms of Section 29A of the 1996 Act, one year period to pass award would commence from the said date. Further, learned senior counsel would also submit that the proceedings before the Arbitral Tribunal was stayed by this Court's interim order dated 20.12.2023 in W.P.No.26977/2023 and the said interim order was operating till 06.03.2024, the date on which the said writ petition was disposed of. The days during which the proceedings were stayed is to be excluded for calculating one year time as provided under Section 29A of the 1996 Act.

10. Further, learned senior counsel referring the impugned order as well as the subsequent order dated

21.03.2024 of the Arbitral Tribunal would submit that no writ petition would be maintainable challenging interim orders of the Arbitral Tribunal and the same could be challenged only in Section 34 proceedings. In support of his contention, he places reliance on the decision of the Hon'ble Apex Court in the case of ***SBP & CO., VS. PATEL ENGINEERING LTD., AND ANOTHER[1].***

11. Having heard the learned counsel appearing for the parties and on perusal of the writ petition papers, the only point which falls for our consideration is as to,

> *"In the facts and circumstances of the case, whether the Arbitral Tribunal is justified in observing in its order dated 21.03.2024 that arbitral proceedings has commenced on 20.05.2023 and that the period of stay of the proceedings to be excluded for timeline of twelve months for completion of proceedings?"*

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[1] *(2005) 8 SCC 618*

12. Answer to the above point would be in the Affirmative for the following reasons:

(a) The relevant provisions to decide the above issue are Section 23 and Section 29A of the 1996 Act, which reads as follows:

> "***23. Statement of claim and defence***.— *(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.*
>
> *(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.*
>
> *(2-A) The respondent, in support of his case, may also submit a counter claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter claim or*

set-off falls within the scope of the arbitration agreement.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

(4) 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.

***29A. Time limit for arbitral award**.— (1) 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 completion of pleadings under sub-section (4) of Section 23:*

Provided that the award in the matter of international commercial arbitration may be

made as expeditiously as possible and endeavour may be made to dispose of the 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 of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

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

(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 while extending the period under this sub-section, if the court finds that

the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per 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 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.

(8) It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

(b) In terms of Section 23, within the period of time agreed between the parties or as determined by the Arbitral Tribunal, the parties shall file their claim statement as well as objections to the claim statement

along with relevant documents but not later than six months from the date of entering reference by the Arbitrator/s. It is also permissible for the respondents to file counterclaim or plead set off. The filing of claim petition, objections or counterclaims shall be completed within six months from the date of first hearing on appointment of Arbitrators. In terms of Section 29A, award other than international commercial arbitration shall be made by the Arbitral Tribunal within a period of twelve months from the date of completion of pleadings under Sub-Section (4) of Section 23. Sub-Section (3) provides that parties may by consent extend the period specified in Sub-section (1) for making award for a further period not exceeding six months. If the award is not made within the period specified in Sub-Section (1) or within the extended period under Sub-Section (3), the mandate of Arbitral Tribunal shall terminate unless the Court

has, either prior or after the expiry of the period so specified, extended the period. The extension of period by Court referred to in Section 4 may be on the application of any of the parties for sufficient cause and on such terms and conditions as may be imposed by the Court.

(c) In terms of Section 23(4), pleadings before the Arbitral Tribunal would include statement of claim, objections, counterclaim and objections to counterclaim. At this stage, it would be useful to refer Order VI Rule 1 of CPC which defines 'pleading'. In terms of Order VI Rule 1 of CPC, 'pleading' shall mean plaint or written statement. Rejoinder or replication could be filed with the permission of the Court. When the rejoinder or replication is filed with the permission of the Court, then it would form part of pleadings.

(d) In the case on hand, admittedly the petitioner's request for extension of time to file surrejoinder was disallowed and the arbitral proceedings was posted for issues. At that stage, the petitioner approached this Court in W.P.No.10091/2023 which was disposed of by order dated 11.05.2023 and relevant paragraph 5 reads as follows:

> *"5. A perusal of the impugned order passed by the Arbitral Tribunal makes it clear that there is no adverse order passed against the petitioner in so far as their right to lead evidence and participate in the proceedings is concerned. However, having regard to the fact that the matter has been posted for recording the evidence, in the peculiar facts and circumstances of the instant case, we deem it just and proper to dispose of this petition by reserving liberty in favour of the petitioner to file their surrejoinder on the next date of hearing, i.e. on 20-5-2023, without seeking any extension in this regard."*

(e) Learned Single Judge of this Court reserved liberty to the petitioner to file surrejoinder on the next date of hearing i.e., on 20.05.2023 and accordingly, the petitioner filed its surrejoinder on the said date. The contention of the petitioner before the learned Single Judge in the above stated writ petition was that the petitioner intended to complete the proceedings by filing rejoinder. However, due to bonafide reasons, unavoidable circumstances, it was not possible for the petitioner to file surrejoinder and complete the pleadings. When this Court granted liberty to the petitioner to file surrejoinder and in terms of the said liberty, the petitioner filed surrejoinder. When such surrejoinder is filed on the liberty granted by this Court, it would form part of the pleadings. Without looking into the surrejoinder when taken on record, the Arbitral Tribunal could not have proceeded further. Moreover, the copy of proceedings before the Arbitral

Tribunal which are placed on record would demonstrate that from the date of filing the above stated writ petition, the petitioner for one or the other reason sought adjournment and the proceedings was adjourned at the instance of the petitioner. In the above circumstances, the Arbitral Tribunal is right in observing that in terms of Section 29A(1) of 1996 Act, period of twelve months to make award would commence from 20.05.2023 i.e., when the surrejoinder filed by the petitioner on the liberty granted by this Court in W.P.No.10091/2023, was taken on record.

(f) It is relevant to note that the respondent was before this Court in W.P.No.26977/2023 challenging the NCLT proceedings initiated by the petitioner under Section 95 of IBC. In the said proceedings, stay of the arbitration proceedings was granted on 20.12.2023 and stay of proceedings was in

force till 06.03.2024, the date on which the writ petition was allowed. Admittedly, arbitral proceedings was stayed for about 77 days. When there was stay of proceedings before the Arbitral Tribunal, the Arbitral Tribunal could not have proceeded further. It is settled position of law that for calculating period of limitation or for calculating the time granted by the Court to perform certain acts, if there is stay in any other proceedings preventing the authority or the Court proceeding further in the matter, such period shall have to be excluded. In other words, the period occupied by the order of stay made by a Court shall be excluded. In the instant case also, the period during which the proceedings before the Arbitral Tribunal was stayed shall have to be excluded for calculating or determining twelve months period for making award in terms of Section 29A(1) of 1996 Act.

(g) Learned senior counsel Sri.S.Basavaraj submitted that the purpose of fixing timeline under Section 29A of 1996 Act is to see that the purpose and object of 1996 Act is achieved and to see that the parties would get speedy justice. From the order sheet of the Arbitral proceedings, it is seen that the petitioner who is respondent before the Arbitral Tribunal, took more than three to four adjournments to file its objection statement and also to file counterclaim. Thereafter, it took several adjournments and also sought extension of time to file surrejoinder. Admittedly, the Arbitral Tribunal entered reference on 17.11.2022, since then, the petitioner has filed six writ petitions challenging different interlocutory orders passed by the Arbitral Tribunal.

13. For the reasons recorded above and in the above circumstances, we deem it appropriate to dismiss the present writ petition with costs of Rs.25,000/-,

payable to the 'Karnataka State Legal Services Authority'. The above cost shall be paid within two weeks from today and shall produce receipt for having paid before the Arbitral Tribunal.

14. In the facts and circumstances of the case and in view of the conclusion arrived at by us, we deem it not to go into the question of maintainability of writ petition raised by respondents.

15. For the reasons recorded above, we are of the view that there is no merit in the writ petition and accordingly writ petition stands dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

NC.
CT: bms