HC-KAR

NC: 2026:KHC:11596-DB
COMAP No. 63 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

COMMERCIAL APPEAL NO. 63 OF 2025

BETWEEN:

1. M/S R.K. INFRA AND
ENGINEERING (INDIA) PVT. LTD.
HAVING ITS REGISTERED OFFICE AT
NO 1-2-39/10 AND 11
5TH FLOOR, R.K. ASOKA
NIZAMPET ROAD, HYDERNAGAR
KUKATPALLY, HYDERABAD - 500 085
REP. BY ITS MANAGING DIRECTOR
MR. BITRAGUNTA
RAVIKALYAN REDDY

…APPELLANT

(BY DR. VENKAT REDDY DONTHI REDDY, SENIOR ADVOCATE A/W SRI SRIKANTHA RAO VEMUGANTI, ADVOCATE)

Digitally signed by SRIDEVI S
Location: High Court of Karnataka

AND:

1. M/S THE SANDUR MANGANESE AND
IRON ORE LTD.
A COMPANY INCORPORATED UNDER
THE INDIAN COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT No.9
"SANDUR HOUSE", BELLARY ROAD
SADASHIVANAGAR
BENGALURU - 560 080

…RESPONDENT

(BY SRI RISHIKESH MADHAV, ADVOCATE FOR C/R)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE JUDGMENT DATED 30.11.2024 PASSED IN COM.A.P.NO. 132/2023 BY THE HON'BLE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCH-84), (ANNEXURE-A) AND ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning an order dated 30.11.2024 passed by the learned Addl. City Civil & Sessions Judge, Bengaluru [**Commercial Court**], in COMAP.No.132/2023. The appellant had filed the said application under Section 34 of the A&C Act, for setting aside the arbitral award dated 31.08.2023 [**impugned award**] passed by the Arbitral Tribunal comprising the sole arbitrator [**Arbitral Tribunal**].

2. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with the agreement dated 20.12.2010 for the construction of the Sandur –

Kumaraswamy Temple road [**the Agreement**]. In terms of the Agreement, respondent No.1 had engaged the appellant for the construction of a road of a length of about 12 kilometers from Sandur to Kumaraswamy temple. The entire work was agreed to be completed within six (06) months. The consideration for executing the scope of works as specified in the Agreement was agreed at ₹23,49,51,123/-, inclusive of taxes, other than service tax.

3. As per the agreed payment terms, 10% of the amount, i.e., ₹2,35,00,000/-, was required to be paid as a mobilisation advance. Out of the aforesaid amount, ₹1,00,00,000/- was already paid at the time of entering into the Agreement. The balance 90% of the price was required to be paid against progressive fortnightly running account bills, after deduction of 10%. The remaining 10% of the price was to be retained as a security and paid after the defect liability period, plus one (01) month.

4. The appellant did not complete the work within the time as stipulated. In the aforesaid circumstances, respondent No.1 issued notices dated 21.09.2011 and 05.01.2012, calling upon the

appellant to complete the works. Despite the said notices, the work was not completed. Accordingly, respondent No.1 issued a notice dated 07.06.2012 terminating the contract.

5. Thereafter, respondent No.1 filed a claim before the Indian Council of Arbitration [**ICA**] in terms of the arbitration clause under the Agreement. At this stage, it is relevant to refer to the arbitration clause. The same is reproduced below.

> "Arbitration & applicable law:
>
> Any dispute arising shall be referred to and finally resolved by arbitration under the Rules of Arbitration of Indian Council of Arbitration (the "ICA Rules") as amended and in force, from time to time. This contract shall be exclusively governed by Indian law."

6. There is no ambiguity in the arbitration clause, which embodies the arbitration agreement. The parties had agreed to resolve the disputes under the Rules of Arbitration of the Indian Council of Arbitration [**ICA Rules**]. Notwithstanding the same, the appellant objected to the reference of disputes to the ICA.

7. It is relevant to refer to the appellant's communication dated 19.09.2013 in this regard. The relevant extract of the same is set out below:

> "2. Though it is stated in your notice that a reference is invited to the arbitration clause contained at page-12 (Sic. Page-5) of the work order dated 20-12-2010 between the parties, my client has accepted for alternate dispute resolution through arbitration as per the provisions of the Arbitration & Conciliation Act, 1996, but it appears that Sandur has incorporated by changing into resolution through arbitration under the rules of Arbitration of ICA. Sandur has never invoke the arbitration clause till this date even in the last notice dated 07.06.2012 it was not specifically mentioned about the invocation of arbitration clause. Had they mentioned my client would have taken appropriate steps by this time. Hence, the present claim by Sandur is not maintainable. Further, my client is not cash rich company to come under the clutches of the Indian Council of Arbitration and thereafter become a sick company, as the charges are not economically viable for my client and my client has no faith in your institution and reserve its right to initiate appropriate proceedings by filing a petition before the Hon'ble High Court for appointment of arbitrator to resolve the disputes."

8. It is important to note that the respondent's request for arbitration was also accompanied by a Statement of Claims. Therefore, there could be no doubt as to the disputes that had arisen.

9. In view of the appellant's stand that it had not agreed to an arbitration under the ICA Rules, but had agreed to arbitration under the A&C Act; respondent No.1 filed a petition under Section 11 of the A&C Act before this Court (CMP.No.100007/2015). The said

petition was allowed by an order dated 05.11.2020. And, the Arbitral Tribunal was constituted.

10. The Court also observed that all defence/s of the appellant on merits, were kept open. However, all issues with regard to the constitution of the Arbitral Tribunal were closed.

11. The appellant filed a special leave petition seeking leave to appeal against the said order dated 05.11.2020 before the Supreme Court, which was dismissed.

12. The Arbitral Tribunal considered the claims of the respondent and delivered the impugned award. The operative part of the award is set out below:

"AWARD

(a) Claim Petition filed by the Claimant is allowed in part with cost;

(b) Counter-claims raised by the Respondent stand rejected;

(c) Claimant is entitled to recover from the Respondent a sum of Rs.7,99,49,003/- (Rupees Seven Crore Ninety Nine Lakh Forty Nine Thousand and Three) with interest at the rate of 12% per annum on Rs. 7,99,49,003/- (Rupees Seven Crore Ninety Nine Lakh Forty Nine Thousand and Three) only, from 7.6.2012 till the realization of the entire amount along with the following costs:

(i) Rs. 14,00,000/- (Rupees Fourteen Lakhs) towards legal and miscellaneous expenses;

(ii) Amount paid by the Claimant towards Arbitration Fee to the Arbitrator, as its share;

(iii) Secretarial charges paid by the Claimant to Sri SM Keshava Rao, secretary of the Tribunal, as its share;

(iv) Venue fee paid to Basavanagudi Arbitration Centre, Basavanagudi, Bangalore 560 004, as its share;"

13. The Arbitral Tribunal held that respondent No.1 was entitled to part of the liquidated damages quantified at ₹1,17,47,556/-. The Tribunal also accepted that the appellant had received a sum of ₹10,05,00,000/- in advance and had executed works valued at ₹3,22,98,553.77. Accordingly, the Arbitral Tribunal determined that a net amount of ₹7,99,49,003/- was refundable by the appellant to the respondent.

14. As noted above, the appellant filed an application to set aside the impugned award, which was dismissed by the impugned order.

15. The learned counsel appearing for the appellant fairly states that, insofar as the claim on merits is concerned, the appellant cannot agitate the same in these proceedings and that the impugned award to that extent is required to be accepted. He, however, submits that the impugned award is liable to be set aside on the ground of patent illegality as the Arbitral Tribunal had failed to consider that the claims raised by respondent No.1 were beyond the period of limitation. His contention is premised on the reasoning that, since no notice under Section 21 of the A&C Act was issued, the limitation could only be considered as having stopped running, at the earliest, on the date of filing the petition under Section 11 of the A&C Act, that is, on 13.02.2015.

16. The learned counsel submits that, since the work was required to be completed within six (06) months from the date of the contract, the said period expired on 19.06.2011. The contract further provided that if the delay exceeded eight (08) weeks, the order for the balance of the work could be cancelled. This period of eight (08) weeks expired on 14.08.2011. He submits that, therefore, the cause of action for the respondent to file a claim against the appellant arose on 14.08.2011. However, the petition

under Section 11 of the A&C Act was filed on 13.02.2015, which was beyond the period of three (03) years from the date of cause of action – the period of limitation as specified under Article 54 of the Limitation Act, 1963. Thus, the claim was liable to be dismissed.

17. We find no merit in the aforesaid contention. Concededly, the contract was terminated on 07.06.2012; prior to that, the contract was subsisting.

18. The appellant delayed the execution of the works, and that may have entitled respondent No.1 to terminate the Agreement. However, it is not disputed that the Agreement was not terminated until 07.06.2012. Thus, the period of limitation commenced from 07.06.2012.

19. The contention that the period of limitation would run till 13.02.2015 is also unmerited. Admittedly, respondent No.1 had filed a statement of claim along with his request for arbitration before the ICA on 01.07.2013. A plain reading of the arbitration clause indicates that such reference was in conformity with the arbitration agreement between the parties. Respondent No.1,

having taken steps to commence the arbitral proceedings, the limitation period for an action would stop running on 01.07.2013.

20. It is relevant to refer to Rule 15 of the ICA Rules. The same is set out below.

> **"Rule 15**
>
> (i) Any Party wishing to commence arbitration proceedings under these rules (Claimant) shall give a notice of request for arbitration to the Registrar of ICA and to the Respondent.
>
> (ii) The notice of request (application) for arbitration to the Registrar shall be accompanied by:-
>
> (a) the names and full addresses of the parties to the dispute.
>
> (b) statement of the claim and facts supporting the claim, points at issue and relief or remedies sought with other details of the claimant's case.
>
> (c) original or duly certified copies of the arbitration agreement, any contract or agreement out of or in connection with which the dispute has arisen and such other documents and information relevant or relied upon.
>
> (d) Registration Fee of Rs.10,000/- for claims up to Rs. One Crore and Rs.20,000/-for claims more than Rs. One Crore.
>
> (e) The Arbitration shall be deemed to have commenced on the day the application for arbitration, registration fee and statement of claim are received in the office of the Council."

21. Clause (e) of Rule 15 of the ICA Rules expressly provides that the arbitration would be deemed to have commenced on the day when the application for arbitration, registration fee and statement of claim are received in the ICA's office.

22. It is also relevant to refer to Section 21 of the A&C Act, which is set out below.

> "**21. Commencement of arbitral proceedings**.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

23. It is apparent from the plain language of Section 21 of the A&C Act that the arbitral proceedings are deemed to commence on the date when a request that the disputes be referred to arbitration is received by the non-claimant. However, the opening words of Section 21 make it clear that this is subject to the parties agreeing otherwise.

24. In the present case, the parties had agreed that the arbitration would be conducted under the ICA Rules. Thus, the import of the said agreement was to incorporate the ICA Rules as a

part of the arbitration agreement. It would necessarily follow that the parties had agreed that the arbitration would commence on the date when the application for arbitration, registration fee and statement of claim are received by the office of the ICA, which, as stated above, were received on 01.07.2013.

25. Thus, the arbitral proceedings commenced on 01.07.2013.

26. As noted above, the appellant had objected to the said reference by a communication dated 19.09.2013. In view of said objection, the respondent was constrained to file a petition under Section 11 of the A&C Act seeking the appointment of an Arbitral Tribunal. This petition was filed on 13.02.2015.

27. The period of limitation for the substantive claims and the limitation period for appointment of arbitrator ought not to be conflated. **In J.C. Budhraja v. Orissa Mining Corpn. Ltd.**[1]**,** the Supreme Court had in the context of the provisions of the Arbitration Act 1940 held as under:

> "25. The learned counsel for the appellant submitted that the limitation would begun to run from the date on

[1] (2008) 2 SCC 444

which a difference arose between the parties, and in this case the difference arose only when OMC refused to comply with the notice dated 4-6-1980 seeking reference to arbitration. We are afraid, the contention is without merit. The appellant is obviously confusing the limitation for a petition under Section 8(2) of the Arbitration Act, 1940 with the limitation for the claim itself. The limitation for a suit is calculated as on the date of filing of the suit. In the case of arbitration, limitation for the claim is to be calculated on the date on which the arbitration is deemed to have commenced.

26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in *Major (Retd.) Inder Singh Rekhi* v. *DDA* [(1988) 2 SCC 338] , *Panchu Gopal Bose* v. *Board of Trustees for Port of Calcutta* [(1993) 4

> SCC 338] and *Utkal Commercial Corpn.* v. *Central Coal Fields Ltd.* [(1999) 2 SCC 571] also make this position clear."

28. In the case of **Bharat Sanchar Nigam Ltd., (BSNL) and Anr. v. Nortel Networks India Pvt. Ltd.**[2]**,** the Supreme Court reiterated that the period of limitation for substantive claims would be as per various articles of the schedule to the Limitation Act 1963, and the same cannot be confused with the period of limitation for filing an application under Section 11 of the A&C Act. Since no period of limitation is prescribed for filing the said application, Article 137 of the Schedule to the Limitation Act 1963 – which prescribes a period of three years – would be applicable. This period would commence on the date the right to apply arises.

29. We may also refer to the decision of the Bombay High Court in **Deepdharshan Builders (P) Ltd. v. Saroj**[3]. In this decision, the Bombay High court had observed as under:

> *"47.* It is not in dispute that Article 137 of the Schedule to the Limitation Act, 1963, such an application be filed within three years from the date

[2] 2021 SCC Online SC 207

[3] 2018 SCC OnLine Bom 4885

> when the right to apply accrues. In my view, under Article 137 of the Limitation Act, 1963, application for appointment of an arbitrator under Section 11(6) or Section 11(9) of the Arbitration Act before the High Court or the Hon'ble Supreme Court would apply from the date when a notice invoking an arbitration agreement is received by other side and other side refuses to the name suggested by the opponent or refusing to suggest any other name in accordance with the provisions of Section 11 or the agreed procedure prescribed in the arbitration agreement within the time contemplated therein or specifically refuses to appoint any arbitrator in the event of such other party being an appointing authority.
>
> 48. In my view, the limitation prescribed under Article 137 of the Schedule to the Limitation Act, 1963 which applies to an application under Section 11(6) or Section 11(9) of the Arbitration Act filed before the High Court or before the Hon'ble Supreme Court cannot be mixed up with the period of limitation applicable to the claims prescribed in various other Articles of the Schedule to the Limitation Act, 1963. Both these periods of limitation i.e. one applicable to the claims being made and another being applicable to the application under Section 11(6) or Section 11(9) of the Arbitration Act to which Article 137 of the Schedule to the Limitation Act, 1963 applies, are two different periods of limitation and cannot be made applicable to each other."

30. The limitation period for claims and the limitation period for appointment of an arbitral tribunal are two separate periods of limitation. The first period concerns the limitation period for

commencing the arbitral proceedings. The second period is the period of limitation for taking steps to appoint an Arbitral Tribunal. The question of limitation for seeking appointment of an Arbitral Tribunal after the arbitral proceedings have commenced is covered under Article 137 of the Limitation Act, 1963. In the present case, no separate notice under Section 21 of the A&C Act was issued. However, respondent No.1 had filed the statement of claims and served the same on the appellant, with a request to the ICA to commence the arbitral proceedings under the arbitration clause. Thus, the arbitral proceedings commenced with effect from 01.07.2013. The petition under Section 11 of the A&C Act was filed on 13.02.2015, which was within the period of three (03) years as specified under Article 137 of the Limitation Act, 1963.

31. The limitation period for making the claim stopped running with the commencement of the arbitral proceedings. In **State of Goa v. Praveen Enterprises**[4]**,** the Supreme Court had explained that:

> " 16. The purpose of Section 21 is to specify, in the absence of a provision in the arbitration agreement in that behalf, as to

[4] (2012) 12 SCC 581

> when an arbitral proceeding in regard to a dispute commences. This becomes relevant for the purpose of Section 43 of the Act. Sub-section (1) of Section 43 provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in courts. Sub-section (2) of Section 43 provides that for the purposes of Section 43 and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Act. Having regard to Section 43 of the Act, any claim made beyond the period of limitation prescribed by the Limitation Act, 1963 will be barred by limitation and the Arbitral Tribunal will have to reject such claims as barred by limitation."

32. Thus, the period of limitation for the claims stopped running with the commencement of the arbitral proceedings.

33. In view of the above, we find no merit in the appeal and the same is accordingly dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

SD
List No.: 2 Sl No.: 20