

Application No.4482 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Application No.4482 of 2025

SALLY THERMOPLASTIC INDIA LIMITED

represented by its Managing Director,

Mr.Mohammed Harris

Having Registered Office at:

229, C/2, III Floor, Raahat Plaza,

172, Arcot Road,

Vadapalani, Chennai - 600 026.

Branch Office at:

#18, 1st Floor, 7th Main Road,

HRBR Layout, Kalyan Nagar,

Bangalore - 560 043.

.... Applicant

Vs.

LEARNING LEADERSHIP FOUNDATION

represented by its Authorized Signatory,

Having an Office at:

No.1211, Padma Towers-I,

5, Rajendra Palace,

New Delhi - 100 008.

.... Respondent

PRAYER

Application filed under Order XIV Rule 8 of O.S.Rules read with Section 29A(5) of the Arbitration and Conciliation Act, 1996, praying to extend the time for passing the Arbitral Award in the Subject Arbitration from 15.10.2022 for an appropriate period of time.

For Applicant : Mr.K.Venkatraman



Application No.4482 of 2025

for M/s.TATVA Legal Chennai

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For Respondent : Mr.Thriyambak J. Kannan

ORDER

This application has been filed under Section 29A(5) of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] for extension of time for completion of arbitral proceedings and for passing the arbitral award.

2. Heard Mr.K.Venkatraman, learned counsel for applicant and Mr.Thriyambak J. Kannan, learned counsel for respondent.

3. The dispute between the parties was referred to the sole Arbitrator. The sole Arbitrator, through e-mail dated 01.12.2022, informed the parties that due to his health condition, he is not in a position to continue as an Arbitrator and therefore, requested the parties to inform the same to the Court and to take steps for appointment of a new Arbitrator to resolve the dispute.

4. In the year 2025, the applicant engaged the present counsel

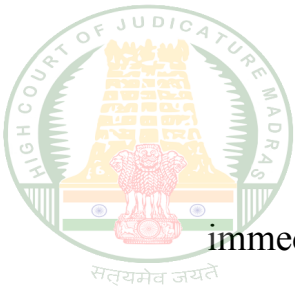


Application No.4482 of 2025

WEB COPY

and instructed him about the developments. The new counsel, who represented the applicant, seems to have informed the sole Arbitrator that he is coming by way of change of vakalath and he wanted to file the vakalath before the sole Arbitrator. The sole Arbitrator, through e-mail dated 20.05.2025, informed that he is in a position to continue as an Arbitrator and requested the parties to obtain suitable directions by means of extension of time to complete the arbitration proceedings. It is under these circumstances, the present application came to be filed before this Court.

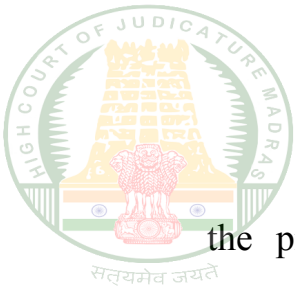
5. Learned counsel for the applicant submitted that the sole Arbitrator entered reference on 04.10.2018 and the pleadings were completed on 15.04.2021. The twelve months period expired on 15.04.2022. However, on 01.12.2022, the sole Arbitrator issued a e-mail stating that he is not in a position to continue as an Arbitrator due to his health condition. Learned counsel further submitted that the applicant was not able to immediately take any steps since the Managing Director met with an accident and he was hospitalized. That apart, the previous counsel, who was appearing for the applicant, also faced a health debacle. Under these circumstances, the applicant was not in a position to take any



immediate steps. Hence, after the new counsel was engaged and a request was made by the sole Arbitrator seeking for extension of time, the present application was moved before this Court. Learned counsel submitted that the applicant has a claim of nearly Rs.6.5 crores against the respondent and the respondent is also having a counter claim of nearly Rs.3.25 crores. Therefore, it is in the interest of both sides to continue the arbitration proceedings and no useful purpose will be served in terminating the mandate.

6. Learned counsel for the applicant, to substantiate his submission, relied upon the judgment of the Apex Court in ***Ajay Protech Pvt. Ltd. vs. General Manager and Another [2024 SCC Online SC 3381]***. Learned counsel also relied upon the judgment of the Apex Court in ***Rohan Builders (India) Private Limited v. Berger Paints India Limited [2024 SCC OnLine Sc 2494]*** and submitted that the application under Section 29A of the Act is maintainable even after the prescribed period is over. Learned counsel also relied upon the judgment of the Bombay High Court in ***Eros International Media Ltd. v. Frioze A. Nadiadwala*** dated 28.02.2024.

7. *Per contra*, learned counsel for the respondent submitted that



Application No.4482 of 2025

WEB COPY

the present application filed under Section 29A of the Act is not maintainable since the proceedings itself stood terminated after the sole Arbitrator had intimated through e-mail dated 01.12.2022 that he is not willing to continue with the proceedings due to his health condition. Learned counsel submitted that at the best, the applicant ought to have sought for substitution of Arbitrator at that stage and there is no question of seeking for extension of period since the proceedings were already terminated and such extension can be sought for only when the proceedings are in seisin. Learned counsel also relied upon the judgment of the Apex Court in the case of **Rohan Builders** [supra] and submitted that the said judgment will apply only in a case where the proceedings are in seisin and the period has already expired, whereas, in the present case, the proceedings itself stood terminated in 2022 and the Arbitral Tribunal has become *functus officio* and consequently, there is no question of extending the time for a Tribunal, which is not in existence. Accordingly, the learned counsel sought for the dismissal of this application.

8. This Court carefully considered the submissions made on either side and the materials available on record.



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9. There is no dispute on the facts of the present case and therefore, this Court directly goes into the issue involved in the case. The sole Arbitrator, through email dated 01.12.2022, informed the parties as follows:

"Due to my present health condition I am not in a position to continue in this matter as an Arbitrator. Therefore I request you to kindly inform the Hon'ble High Court for appointment of substitute Arbitrator and as and when new Arbitrator is appointed on intimation received, all the records would be forwarded to the new Arbitrator."

10. Section 32 of the Act provides for termination of proceedings. Section 32(2)(c) of the Act provides for a scenario where the Arbitral Tribunal finds that continuation of the proceedings has for any other reason become unnecessary or impossible and in such a case, it can be terminated. In order to understand the purport of the word 'impossible', it will be relevant to take note of Section 14(1)(b) of the Act, which shows that the mandate of the Arbitrator will stand terminated and he shall be substituted by another Arbitrator where he withdraws from his office or the parties agreed to the termination of the contract in which event, it will become impossible for the Arbitrator to act in that capacity.



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11. The e-mail dated 01.12.2022 issued by the sole Arbitrator, in no uncertain terms, makes it clear that his health condition is preventing him from continuing as an Arbitrator and therefore, he has requested the parties to take steps to get a new Arbitrator appointed. Thus, the Arbitrator has already expressed his mind that it is impossible for him to continue as an Arbitrator and had abandoned the proceedings. Under such circumstances, the proceedings itself will stand terminated. At the best, the applicant could have moved this Court seeking for substitution of an Arbitrator, which has not been done so far. Instead, the present application has been filed for extension of time under Section 29A of the Act.

12. Learned counsel for the applicant, by pointing out Section 29A(4) of the Act, submitted that if the award is not made within the period specified or during the extended period, the mandate of the Arbitrator will terminate, unless the Court has extended the period. To understand the purport of Section 29A(4) of the Act, the learned counsel once again relied upon the judgment of the Apex Court in the case of ***Rohan Builders*** [supra].



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13. The above submission made by the learned counsel for the applicant will hold good if the proceedings remain in seisin. In other words, the proceedings should not have been terminated and the period must have expired and in such a scenario, the Court can always extend the time and thereby, validate the continuation of the proceedings.

14. The above scenario is not available in the present case. In the case in hand, the proceedings were abandoned and consequently stood terminated as was explained supra. Thereafter, there is no question of filing an application seeking for extension of time for a non-existent Arbitral Tribunal. Therefore, as rightly contended by the learned counsel for the respondent, the present application is not maintainable.

15. Learned counsel for the applicant submitted that in the case in hand, even the respondent has an interest in the continuation of the proceedings since they have made a counter claim for a sum of Rs.3.35 crores. Therefore, it is also the duty of the respondent to have approached this Court seeking for substitution of the Arbitrator.



Application No.4482 of 2025

16. In the considered view of this Court, for whatever reasons,

the respondent has chosen not to approach the Court and filed an application seeking for substitution of the Arbitrator. Therefore, that by itself does not give a reason for the applicant to contend before this Court that the proceedings must continue in the interest of both the applicant and the respondent. This Court would have accepted the said submission if the respondent had consented for the order. Learned counsel for the respondent, on instructions, submitted that the respondent is not consenting for any order. Therefore, there is no question of forcing the respondent to undergo arbitration proceedings, more particularly, in view of the fact that the proceedings stood terminated as early as in the year 2022. It is true that the Apex Court in the case of ***Ajay Protech*** [supra] held that sufficient cause must be interpreted under Section 29A of the Act to facilitate effective dispute resolution and not to obstruct it. However, this ratio cannot be applied to the case in hand since the proceedings were terminated and thereafter, the Arbitral Tribunal itself becomes *functus officio* and consequently, there is no question of

N.ANAND VENKATESH, J.

gm

extending the time by applying the judgment of the Apex Court in the



Application No.4482 of 2025

case of ***Ajay Protech*** [supra]. For all the above reasons, this Court finds that the present application is not maintainable.

Accordingly, this application is dismissed.

10.10.2025

Index:yes
Speaking Order
NCC : yes
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Application No.4482 of 2025