

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT PETITION NO: 23030 OF 2024

Between:

Amara Resources Pvt. Ltd., (previously known as AMR Hospitality Services Ltd.) Having its Regd. Office at Saikrupa, D.No.8-3-833, Plot No. 37 and 38, Phase-I, Kamalapuri Colony, Hyderabad, Hyderabad - 500 073

...PETITIONER

AND

1. Union of India, Rep. by its Secretary, Central Secretariat, New Delhi
2. Trent Limited, Having its registered office at Trent House, Plot No. C-60, G-Block, Beside Ferrari Showroom, Bandra Kuria Complex, Bandra (East), Mumbai - 400 051 Rep. by its authorized signatory Ms. Saroj Ghatge
3. I-Choice Super Stores Pvt. Ltd, Having its registered office at Plot No. 8, Karthik Enclave, Near Diamond Point, Sikh Village Road, Secunderabad - 500 009
4. The Honbe Arbitral Tribunal Comprising of Justice (Retd.), A. Rajashekar Reddy, Plot No. 22A, Road No. 12, M.L.A., Banjara Hills, Hyderabad
5. Smt. Dasari Arum. Kumari, W/o. Late Sri. D. Lakshmana Rao, Aged about 72 years, Occ. Housewife, R/o. H.No.32-26-515A, Eluru Road, Machavaram Down, Vijayawada, Krishna District- 520 004.
6. Smt. Avanthi Gutta, W/o. Sri. Dasam Sandeep, Aged about 36 years, Occ. Housewife, Rep. by her GPA Holder Sri. Gutta Durga Prasada Rao
7. Gutta Durga Prasad Rao, S/o. Late Sitaramanaiah, Aged about 79 years, Occ. Business
8. Smt. Gutta Vijayalakshmi, W/o. Gutta Durga Prasada Rao, Aged about 73 years, Occ. Housewife, Respondent Nos. 5 to 8 are R/o. H.No.32-26-5/15, Behind Super Bazar, Eluru Road, Machavaram Down, Vijayawada, Krishna District - 520 004.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, order or direction, one more particularly one in the nature of a writ of Mandamus declaring the impugned order dated 23.07.2024 in I.A. No. 2 in Arb Case no. 4 of 2024 passed by the 4th Respondent as being without jurisdiction, illegal, arbitrary, violative of the

Petitioners' statutory and other rights and invalid and consequently set aside the same and to consequently terminated the arbitral proceedings.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased disposal of the Writ Petition, this Hon'ble Col may be pleased to suspend impugned order dated. 23.07.2024 in I.A. No. 2 in Arb Case no. 4 2024 passed by the 4th Respondent during the pendency of the above Writ Petition.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to disposal of the Writ Petition, this Hon'ble Court may be pleased to stay the impugned arbitration proceedings before the 4th Respondent during the pendency of the above Writ Petition.

Counsel for the Petitioner: M/s. K.MAMTA FOR SRI A.NAREN RUDRA
Counsel for the Respondent No.1: SRI A.S.VASUDEVAN FOR
SRI B.NARASIMHA SHARMA, ADDL. SOLICITOR GEN. OF INDIA
Counsel for the Respondent Nos.2 TO 8: --

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.23030 of 2024

ORDER: (per the Hon'ble the Chief Justice Alok Aradhe)

Ms. K. Mamta, learned counsel appears for
Mr. A. Naren Rudra, learned counsel for the petitioner.

Mr. A.S. Vasudevan, learned counsel appears for
Mr. B. Narasimha Sharma, learned Additional Solicitor
General of India, for respondent No.1.

2. In this Writ Petition filed under Article 226 of the
Constitution of India, the petitioner has assailed the validity of
the order dated 23.07.2024 passed by the Arbitral Tribunal by
which the statement of claim filed on behalf of respondent
No.2 has been taken on record *inter alia* on the ground that the
timeline prescribed under Section 23(4) of the Arbitration and
Conciliation Act, 1996 (hereinafter referred to as 'the 1996
Act') is directory in nature. The petitioner has further been
granted time to file its statement of defense till 22.08.2024.

3. Facts giving rise to filing of this Writ Petition briefly stated are that the petitioner claims to be the owner of premises consisting of a total carpet area of 6200 sq feet on the ground floor of Sai Odyssey situate in R.S.No.448/2C, Nearest House No.54-11-12, Gunadala, Vijayawada, Krishna District (Opp. Executive Club), Andhra Pradesh (hereinafter referred to as 'the subject premises') whereas respondent Nos.5 to 8 are the owners of the first floor of the same building. The said premises were leased out to respondent No.3 under a registered lease deed dated 24.05.2013. Thereafter, the lessee, namely, respondent No.3 sought to terminate the lease vide letter dated 29.09.2022 due to default in payment of lease rentals. Respondent No.2/claimant issued a notice on 19.01.2023 by which the Arbitration clause was invoked.

4. Thereafter, respondent No.2 filed an application, namely, Arbitration Application No.96 of 2023 before the Arbitral Tribunal. In the proceeding before the Arbitral Tribunal, respondent No.2 was required to file the statement of claim on 10.06.2024. However, respondent No.2 sought

extension of time to file the statement of claim. The Arbitral Tribunal adjourned the matter to 09.07.2024. Thereafter, on a prayer being made by respondent No.2, the matter was further adjourned to 15.07.2024. In the meanwhile, on 12.07.2024, respondent No.2 made the statement of claim along with I.A.No.2 of 2024 seeking enlargement of time for filing the statement of claim. The Arbitral Tribunal by an order dated 23.07.2024 allowed the same *inter alia* on the ground that the timeline prescribed under Section 23(4) of the 1996 Act are directory in nature and not mandatory. The petitioner was granted time to file the statement of defense till 22.08.2024. In the aforesaid factual background, this Writ Petition has been filed.

5. Learned counsel for the petitioner submitted that Section 23(4) of the 1996 Act is mandatory in nature. In support of aforesaid submission, reliance has been placed on an order dated 10.07.2020 passed by the Supreme Court in *Suo motu* Writ Petition (C) No.3 of 2020 and it has been contended that even the timeline prescribed under Section 23(4) of the 1996

Act has been extended by the Supreme Court during the period of pandemic. Therefore, it is contended that the order dated 23.07.2024 passed by the Arbitral Tribunal be set aside.

6. We have considered the submissions made by the learned counsel for the petitioner and have perused the record.

7. The solitary issue which arises for consideration in this Writ Petition is with regard to the nature of provisions contained in Section 23(4) of the 1996 Act. Before proceeding further, it is apposite to take note of Section 23(4) of the 1996 Act and the same is extracted below for the facility of reference.

“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.”

8. It is a well settled rule of statutory interpretation that the question as to whether a provision is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and

intention of the Legislature must govern and these are to be ascertained not only from the phraseology of the provision, but also by considering the nature of the provision, its design and the consequences which would follow from construing it from one way or the other (See **State of Uttar Pradesh v. Manbodhan Lal Shrivastava**¹). The principles of interpretation whether a provision is directory or mandatory have been summarized by the Supreme Court in **Lalaram v. Jaipur Development Authority**² and in paragraphs 106 and 107, it has been held as under:

“106. As noticed hereinabove, it is affirmatively acknowledged as well that where provisions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of these have the potential of resulting in serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, such prescriptions are generally understood as mere instructions for the guidance of those on whom the duty is imposed and are regarded as directory. It has been the practice to hold such provisions to be directory only, neglect of those, though punishable, would not, however, affect the validity of the acts done. At the same time where however, a power or authority is conferred

¹ AIR 1957 SC 912

² (2016) 11 SCC 31

with a direction that certain regulation or formality shall be complied with, it would neither be unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right of authority.

107. Obviously, thus the mandatory nature of any provision of any Rule of Business would be conditioned by the construction and the purpose thereof to be adjudged in the context of the scheme as a whole. The interpretation of the Rules, necessarily, would be guided by the framework thereof and the contents and purport of its provisions, and the status and tenability of an order/instrument, represented as an executive decision would have to be judged in the conspectus of the attendant facts and circumstances. No straitjacket formula can, thus be ordained, divorced from the Rules applicable and the factual setting accompanying the order/decision under scrutiny.”

9. It is equally well settled that where the consequence of non-compliance of a provision has not been provided by the statute, the same has to be treated as directory. In the instant case, Section 23(4) of the 1996 Act does not prescribe for consequence of not filing the statement of claim and defense within the period of six (6) months. It is also pertinent to note that the Supreme Court in **Kailash v. Nankhu**³, while interpreting the provisions of Order VIII Rule 1 of the Code of

³ (2005) 4 SCC 480

Civil Procedure, 1908, which provides for timeline of filing the written statement, held the provision to be directory.

10. It is pertinent to note that the Calcutta High Court in **Yashovardhan Sinha Huf v. Satyatej Vyapaar Private Limited**⁴ has held the provision to be directory. It is also pertinent to note that the Special Leave Petition against the order passed by Calcutta High Court has been dismissed by the Supreme Court in Special Leave to Appeal (C) No.5851 of 2024 dated 18.03.2024.

11. Applying the aforesaid well settled legal principles to the facts of the case, in our considered opinion Section 23(4) of the 1996 Act is directory in nature.

12. The impugned order passed by the Arbitral Tribunal neither be termed as arbitrary nor it suffers from any error apparent on the face of record so as to warrant interference of this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

⁴ 2022 SCC OnLine Cal 2386

13. In the result, we do not find any merit in the Writ Petition.

14. Accordingly, the Writ Petition fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

//TRUE COPY//

SD/- T. TIRUMALA DEVI
ASSISTANT REGISTRAR

SECTION OFFICER

To

1. One CC to SRI A.NAREN RUDRA, Advocate [OPUC]
2. One CC to SRI B.NARASIMHA SHARMA, ADDL. SOLICITOR GEN. OF INDIA [OPUC]
3. Two CD Copies

PSK.
GJP

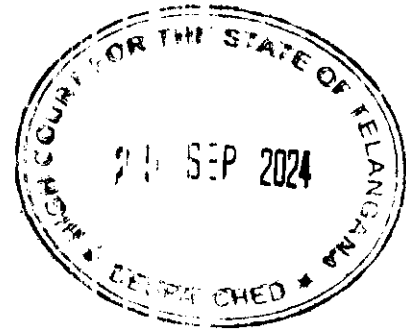


HIGH COURT

DATED:22/08/2024

ORDER

WP.No.23030 of 2024



DISMISSING THE WRIT PETITION
WITHOUT COSTS.

(6) VLV
25/9/24