



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. 96 OF 2026

BETWEEN:

PLIVO INDIA PVT LTD
(FORMERLY KNOWN AS PLIVO
COMMUNICATIONS PVT. LTD.)
7TH FLOOR, INDIQUBE ECO WORLD,
CAMPUS 32, RMZ ECOWORLD,
BHOGANAHALLI VILLAGE,
VARTHUR HOBLI, BELLANDUR,
BENGALURU
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE,
MR. KSHITIJ SHARMA



...APPELLANT

(BY SRI. PRADEEP NAYAK, ADVOCATE)

AND:

1. MR ARVIND ESHWARLAL
RESIDING AT 106,
RAHEJA MANSION,
13 MILTON STREET,
COOKE TOWN,
BENGALURU - 560005



2. SHRI. V. JAGANNATHAN,
FORMER JUDGE,
HIGH COURT OF KARNATAKA,
SOLE ARBITRATOR,
ARBITRATION AND CONCILIATION CENTRE,
BENGALURU (DOMESTIC AND
INTERNATIONAL)
KANIJA BHAVAN,
RACE COURSE ROAD,
BANGALORE-560001

...RESPONDENTS

(BY SRI.SHODHAN BABU A.M, ADVOCATE FOR C/R)

THIS COMAP IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE ORDER DATED 24.01.2026 PASSED BY THE LD LXXXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT AT BENGALURU (CCH-85) PASSED IN COMMERCIAL ARBITRATION PETITION NO.57/2025 PRODUCED AT ANNEXURE B.

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 13(1-A) of the Commercial Courts Act, 2015 read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**]



impugning a judgment dated 24.01.2026 [**impugned judgment**] passed by the learned LXXXIV Additional City Civil and Sessions Judge, Bengaluru (CCH-85) [**Commercial Court**] in Com.A.P.No.57/2025 captioned '**Plivo India Pvt.Ltd., v. Mr.Arvind Eshwarlal & Another**'. The appellant had filed the said petition to set aside the arbitral award dated 24.12.2024 [**impugned award**] passed by respondent No. 2 [**Arbitral Tribunal**].

2. It is stated that respondent No.1 had joined the appellant company as an Associate Director on 27.11.2017 pursuant to the letter of offer dated 16.10.2017. In terms of the said offer, respondent No.1 was employed at an annual remuneration of ₹78,96,400/-. Respondent No.1 had also signed a Non-Disclosure and a Non-Compete Agreement [**NDA**] on joining the services of the appellant on 27.11.2017.

3. The appellant claims that respondent No.1 had violated the terms of the employment agreement as well as the NDA and the same gave rise to disputes between the said parties. Since the disputes were covered by an arbitration agreement, the appellant issued a notice dated 27.10.2018 under Section 21 of the A&C Act.



The parties could not concur on the constitution of the Arbitral Tribunal. Accordingly, the appellant filed a petition (Civil Miscellaneous Petition No.171/2020) under Section 11 of the A&C Act before this Court. The said petition was allowed by an order dated 21.07.2022, and the Court appointed respondent No.2, a former judge of this Court, as the sole arbitrator to adjudicate the disputes that had arisen between the parties.

4. The appellant filed a statement of claims on 28.04.2023. Respondent No.1 resisted the claim, *inter alia*, on the ground that it was barred by limitation. The said contention was accepted by the learned Arbitral Tribunal, and the appellant's claims were, *inter alia*, rejected on that ground. We consider it apposite to reproduce the relevant extract of the impugned award, which reflects the Arbitral Tribunal's reasoning for accepting the said contention:

"44. From the memo filed by the claimant counsel on 4.12.2024, the date of cause of action is shown as 30.5.2018. The date of invocation of Section 21 notice of arbitration is 27.10.2018. Both parties do not dispute the aforesaid dates. If the limitation is calculated from the notice of arbitration, then 3 years period will expire on 26.10.2021. If the extension of limitation on account of COVID 19 pandemic is taken into consideration, the law laid down by the Hon'ble Supreme Court in the case of *Re Cognizance for Extension of Limitation* -



(Miscellaneous Application 21 of 2022) will have to be taken into account. It was held thus:

Restored its order dated March 8, 2021, April 27, 2021 and September 23, 2021. Further directed that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

Consequently, the balance period of limitation remaining as on October 03, 2021, if any, shall become available with effect from March 01, 2022.

Held that, in cases where the limitation expiring during the period between March 15, 2020 till February 28, 2022, the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 01, 2022. Further, where the actual balance period of limitation remaining, with effect from March 01, 2022 is greater than 90 days, that longer period shall apply.

45. Applying the aforesaid extension of limitation laid down by the Hon'ble Supreme Court, in the case on hand the picture that emerges is as under:

(1) Date of Invocation of Section 21,
Notice of Arbitration : **27.10.2018**

(2) Date of expiry of limitation in
the normal course : **26.10.2021**

(3) Since the period of limitation expires between 15.3.2020 and 28.2.2022, the claimant will have the benefit of 90 more days from 01.03.2022.



Therefore, the limitation will expire on
:28.06.2022

(4) The claim petition is filed on : **28.04.2023**

46. Thus, it is clear from the aforesaid calculation that the claim petition was filed after more than 10 months from the expiry of limitation period. Therefore, the question of 440 days being added to 28.2.2022 cannot arise by any stretch of imagination in the light of the extension period granted by the Hon'ble Supreme Court on account of COVID 19. As per the decision, only 90 days can be added after 28.2.2022. As such, the claim petition filed on 28.4.2023 is clearly barred by limitation."

5. Additionally, the Arbitral Tribunal also found that the disputes raised in the claim petition were not specifically mentioned in the notice issued under Section 21 of the A&C Act and therefore, reasoned that the said disputes were beyond the period of limitation. The relevant extract of the impugned award setting out the reasoning of the Arbitral Tribunal in this regard is reproduced as under:

"39. In so far as limitation ground is concerned, the submission made is that the claims sought before this Tribunal are made for the first time in this arbitration proceedings and that they were never the claims mentioned in the arbitration notice dated 27.10.2018 issued under Section 21 of the AC Act by the claimant (Ex. P34). Therefore, as the claims/relief now sought in the claim petition being made for the first time, when the claim petition is filed (on 28.4.2023), more



than 3 years have elapsed from the date of issuance of arbitration notice and the date of filing of the claim petition and as such the claims made are barred by time. In this connection, learned counsel for the respondent relied on the decision of Hon'ble Supreme Court in State of Goa vs. Praveen Enterprises, (2012) 12 SCC 581. "

6. We find that none of the aforesaid reasons, on the basis of which the appellant's claims were rejected, are sustainable. The Arbitral Tribunal's conclusion that the appellant's claims were barred by limitation is *ex facie* erroneous and vitiates the impugned award on the ground of patent illegality. The assumption that the period of limitation would commence from the date of the notice and end on the date when the statement of claims is filed is without any foundation in law.

7. In the present case, the disputes arose in connection with the NDA executed on 27.11.2017. The notice invoking arbitration was issued on 27.10.2018, which is well within the three-years from the date of the agreement. Thus, in any event, the arbitral proceedings commenced within the period of limitation.



8. The period of limitation in respect of any claims would commence from the cause of action and the limitation would stop running on the commencement of the arbitral proceedings.

9. Section 21 of the A&C Act, which provides for the commencement of the arbitration proceedings reads as under:

“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.”

10. A plain reading of Section 21 of the A&C Act indicates that the arbitral proceedings in respect of a particular dispute would commence on the date when the request for that dispute to be referred to arbitration is received.

11. We may refer to the following passages from the decision in ***State of Goa v. Praveen Enterprises***¹. The Supreme Court referred to Section 21 of the A&C Act and explained as under:

“15. Taking a cue from the said section, the respondent submitted that arbitral proceedings can commence only in regard to a dispute in respect of which notice has been served by a

¹ (2012) 12 SCC 581



claimant upon the other party, requesting such dispute to be referred to arbitration; and therefore, a counterclaim can be entertained by the arbitrator only if it has been referred to him, after a notice seeking arbitration in regard to such counterclaim. On a careful consideration we find no basis for such a contention.

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

17. Section 3 of the Limitation Act, 1963 provides for bar of limitation and is extracted below:

“3.Bar of limitation.—(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), *every suit instituted*, appeal preferred, and application made *after the prescribed period shall be dismissed* although limitation has not been set up as a defence.

(2) *For the purposes of this Act,—*

(a) *a suit is instituted,—*

(i) *in an ordinary case, when the plaint is presented to the proper officer;*



(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set-off or a counterclaim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set-off, on the same date as the suit in which the set-off is pleaded;

(ii) in the case of a counterclaim, on the date on which the counterclaim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.” (emphasis supplied)

18. In regard to a claim which is sought to be enforced by filing a civil suit, the question whether the suit is within the period of limitation is decided with reference to the date of institution of the suit, that is, the date of presentation of a plaint. As the Limitation Act, 1963 is made applicable to arbitrations, there is a need to specify the date on which the arbitration is deemed to be instituted or commenced as that will decide whether the proceedings are barred by limitation or not. Section 3 of the Limitation Act, 1963 specifies the date of institution for suit, but does not specify the date of “institution” for arbitration proceedings. Section 21 of the Act



supplies the omission. But for Section 21 there would be considerable confusion as to what would be the date of “institution” in regard to the arbitration proceedings. It will be possible for the respondent in an arbitration to argue that the limitation has to be calculated as on the date on which statement of claim was filed, or the date on which the arbitrator entered upon the reference, or the date on which the arbitrator was appointed by the court, or the date on which the application was filed under Section 11 of the Act. In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which “a request for that dispute to be referred to arbitration is received by the respondent” the said confusion is cleared. Therefore, the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not.

19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding Claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said Claims A and B. Subsequently if the claimant amends the claim statement by adding Claim C [which is permitted under Section 23(3) of the Act] the additional Claim C would not be preceded by a notice seeking arbitration. The date of amendment by which Claim C was introduced, will become the relevant date for determining the limitation in regard to the said Claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may.”



12. The commencement of arbitral proceedings is akin to instituting a suit. The period of limitation for any cause of action stops on commencement of arbitral proceedings, as it does on institution of the suit. Thus, the appellant's claims were not barred by limitation.

13. In the event that there was any delay on the part of the appellant to file a statement of claims, the arbitral proceedings were required to be terminated. Since there is no dispute that the statement of claims had been filed during the course of the arbitral proceedings, that could not be the ground for rejecting them as barred by limitation. The calculation of the period of time from the date of issuance of the notice under Section 21 of the A&C Act and the date of filing of the statement of claims for determining whether the claims are barred by limitation is clearly erroneous.

14. The Arbitral Tribunal's conclusion that the disputes raised by the appellant in its statement of claims were not covered by the notice issued under Section 21 of the A&C Act, is also erroneous. A plain reading of the notice issued under Section 21 of the A&C Act indicates that the appellant had referred to clause 12 of the



NDA and had alleged that respondent No.1 had breached the NDA. The appellant alleged that respondent No.1 had reproduced and copied the confidential information belonging to the appellant. It was unequivocally alleged that respondent No.1 had willfully and dishonestly taken the confidential information belonging to the appellant and had refused to return the same.

15. The statement of claims filed also indicates that the claims are founded on the allegation of breach of the NDA.

16. The contention that the breach of each claim of dispute must be specifically set out in the notice issued under Section 21 of the A&C Act is erroneous. Section 21 merely supplies the statutory provision for the commencement of arbitral proceedings, absent any agreement between the parties regarding the same. It does not control the issues or the claims that can be raised under Section 23 of the A&C Act. We consider it apposite to refer to the following passages from the decision of the Supreme Court in ***ASF Buildtech (P) Ltd. Vs Shapoorji Pallonji & Co.***², which clearly

² (2025) 9 SCC 76



explain the difference in the scope of Sections 21 and 23 of the

A&C Act.:

65. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his “claim”, the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term “claim” as opposed to “particular dispute” employed in Section 21 of the 1996 Act. Although, it could be said that the term “particular dispute” under Section 21 connotes a larger umbrella within which the term “claim” under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such “claim” must be the same or in tandem with the “particular dispute” in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief sought or the framing of issues — its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.



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163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of “commencement of arbitration proceedings”. The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in respect of a particular dispute commences. The words “particular dispute” assume significance in the interpretation of this provision and its underlying object. It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term “particular dispute”, does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the “arbitration agreement” to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional — it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.

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167. Similarly, sub-section (2) of Section 23, which enables the respondent to make a counterclaim or plead set-off, does not envisage any requirement that such counterclaim or set-off must be in respect of or correspond to the “particular dispute” in terms of Section 21 of the 1996 Act, thus, suggesting the legislature's intention to give a wide import to the term “claim” and by extension “counterclaim”. In order to further obviate any confusion in respect of what claims can be raised, Section 23 sub-section (3) goes one step ahead and stipulates that, unless agreed otherwise by the parties, any party may amend or supplement its “claim” during the course of the arbitral proceedings, and further, that such amendment or supplement may be rejected only if the Arbitral Tribunal considers it inappropriate for one and only one reason, that being, the delay in making or seeking such amendment or supplement. What can be discerned from the above is that there is no restriction whatsoever, in the plain words of Section 23 of the 1996 Act, which would be indicative of an inhibition in raising those claims or counterclaims, etc. that have no bearing with the notice of invocation under Section 21 of the 1996 Act.

168. The language used in Section 23 of the 1996 Act makes no reference whatsoever, either explicitly to the provision of Section 21 or the particular words used thereunder, that would be suggestive of any correlation between the two provisions. On the contrary, the singular ground that has been mentioned in Section 23 sub-section (3) upon which an amendment or supplement of claim may be rejected by the Arbitral Tribunal i.e. if it is deemed inappropriate due to delay, is a positive indicium that no restriction can be read into the scope of claims that may be raised in the statement of claim or counterclaim beyond what was stipulated in the notice of invocation under Section 21 of the 1996



Act. Any limitation or restriction on the scope of a statement of claim or a counterclaim as the case may be, has to be understood not from the provision of Section 21 but only from the explicit language used in Section 23 of the 1996 Act.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act.

17. The learned counsel for respondent No. 1 had referred to the decision of the Supreme Court in the case of ***Praveen Enterprises*** (*supra*) and contended that the period of limitation is to be reckoned from the date when the statement of claims was filed. We find no merit in the said contention. The reliance placed on the said decision is misplaced. The decision in ***Praveen Enterprises*** (*supra*) is not an authority for the proposition that claims must be set out in detail in the notice issued under Section 21 of the A&C Act, failing which the claimant is precluded from raising the same,



notwithstanding that the same are covered under the arbitration agreement.

18. Having stated the above, we may note that the aforesaid question does not arise in the given facts of the present case. In the facts of the present case, the appellant had sought reference of the disputes arising out of the breach of the NDA. The statement of claims filed does not set out any dispute, which is not founded on the breach of the NDA.

19. In view of the above, the impugned order and the impugned award are set aside. The parties are at liberty to take steps for adjudication of the disputes by arbitration afresh.

20. The appeal is allowed in the aforesaid terms.

21. All pending applications are also disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE