



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2025**

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**BEFORE**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**CIVIL MISC. PETITION NO. 222 OF 2023**

**C/W**

**CIVIL MISC. PETITION NO. 223 OF 2023**

**IN CMP NO. 222/2023**

**BETWEEN:**

EXCEL INTELLIGENCE SERVICES PRIVATE LIMITED,  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT:  
NO 160/159/166/47, SINGASANDRA HOSUR  
MAIN ROAD, BENGALURU, KARNATAKA-560068,  
REP. BY ITS AUTHORIZED SIGNATORY,  
MYTHILI CHANDRA SHEKAR

...PETITIONER

(BY SRI VISHWAS N, ADVOCATE)

**AND:**

1. DATACON TECH PRIVATE LIMITED,  
(FORMERLY DATACON TECHNOLOGIES  
PRIVATE LIMITED),  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT:  
NO.31/10, LEFT OF MAGADI MAIN ROAD,  
BEHIND CONVENTION CENTER BANGALORE,  
BENGALURU, KARNATAKA-560 079,  
REP. BY ITS MANAGING DIRECTOR.





**NC: 2025:KHC:44011**  
**CMP No. 222 of 2023**  
**C/W CMP No. 223 of 2023**

2. KARNATAKA STATE ELECTRONIC  
DEVELOPMENT CORPORATION LIMITED,  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE:  
AT 2<sup>ND</sup> FLOOR, TTMC 'A' BLOCK, BMTC,  
SHANTINAGAR, K H ROAD, BENGALURU-560027,  
REP. BY ITS MANAGING DIRECTOR.

...RESPONDENTS

- (BY SRI BHAT SHANKAR SHIVARAM & SRI KIRAN N HEGDE,  
ADVOCATES FOR R-1;  
SRI P M NAYAK, ADVOCATE FOR R-2)

THIS CIVIL MISC. PETITION UNDER SEC.11(6) OF THE  
ARBITRATION AND CONCILIATION ACT 1996, PRAYING THAT A.  
ALLOW THE INSTANT PETITION AND APPOINT A SOLE ARBITRATOR  
FOR ADJUDICATION FOR DISPUTES THAT HAVE ARISEN BETWEEN  
THE PARTIES IN TERMS CLAUSE 11.3 OF THE KSEDCL AGREEMENT  
DATED 4 NOVEMBER 2016 (ANNEXURE "B") AND DISPUTE  
RESOLUTION CLAUSE THE DATACON AGREEMENT DATED 6 MARCH  
2017 (ANNEXURE "A"), IN THE INTEREST OF JUSTICE AND EQUITY  
ETC.

**IN CMP NO. 223/2023**

**BETWEEN:**

EXCEL INTELLIGENCE SERVICES PRIVATE LIMITED,  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT:  
NO 160/159/166/47, SINGASANDRA HOSUR MAIN  
ROAD, BENGALURU, KARNTAKA - 560 068,  
REP. BY ITS AUTHORIZED SIGNATORY,  
MYTHILI CHANDRA SHEKAR

...PETITIONER

- (BY SRI VISHWAS N, ADVOCATE)

**AND:**

1. KARNATAKA STATE ELECTRONIC  
DEVELOPMENT CORPORATION LIMITED,  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,



**NC: 2025:KHC:44011**  
**CMP No. 222 of 2023**  
**C/W CMP No. 223 of 2023**

HAVING ITS REGISTERED OFFICE AT:  
2<sup>ND</sup> FLOOR, TTMC 'A' BLOCK, BMTC, SHANTINAGAR,  
K H ROAD, BENGALURU - 560 027,  
REP. BY ITS MANAGING DIRECTOR.

2. DATACON TECH PRIVATE LIMITED,  
(FORMERLY DATACON TECHNOLOGIES  
PRIVATE LIMITED),  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT NO.31/10,  
LEFT OF MAGADI MAIN ROAD, BEHIND  
CONVENTION CENTER BANGALORE,  
BENGALURU, KARNATAKA - 560 079,  
REP. BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI BHAT SHANKAR SHIVARAM & SRI KIRAN N HEGDE,  
ADVOCATE FOR R1;  
SRI P M NAYAK, ADVOCATE FOR R-2)

THIS CIVIL MISC. PETITION UNDER SEC.11(6) OF THE  
ARBITRATION AND CONCILIATION ACT 1996, PRAYING THAT  
THIS HON'BLE COURT BE PLEASED TO A.ALLOW THE INSTANT  
PETITION AND APPOINT A SOLE ARBITRATOR FOR  
ADJUDICATION FOR DISPUTES THAT HAVE ARISEN BETWEEN  
THE PARTIES IN TERMS OF THE KSEDCL AGREEMENT DATED 4  
NOVEMBER 2016 (ANNEXURE-'A') AND THE DATACON  
AGREEMENT DATED 6 MARCH 2017 (ANNEXURE B), IN THE  
INTEREST OF JUSTICE AND EQUITY ETC.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

### **ORAL ORDER**

1. The Petitioner in CMP No.222/2023 is before this  
Court seeking for the following reliefs:



- a. *"Allow the instant petition and appoint a Sole Arbitrator for adjudication for disputes that have arisen between the parties in terms of clause 11.3 of the KSEDCL Agreement dated 4 November 2016 (Annexure "B") and Dispute resolution clause and the Datacon Agreement dated 6 March 2017 (Annexure "A"), in the interest of justice and equity.*
- b. *Pass such other order(s) as this Hon'ble Court deems fit to grant in the circumstances of the case, including an order as to the costs of the present petition, in the interest of justice and equity."*

2. The Petitioner in CMP.No.223/2023 is before this Court seeking for the following reliefs:

- a. *"Allow the instant petition and appoint a Sole Arbitrator for adjudication for disputes that have arisen between the parties in terms clause 11.3 of the KSEDCL Agreement dated 4 November 2016 (Annexure "A") and Dispute resolution clause the Datacon Agreement dated 6 March 2017 (Annexure "B"), in the interest of justice and equity.*
- b. *Pass such other order(s) as this Hon'ble Court deems fit to grant in the circumstances of the case, including an order as to the costs of the present petition, in the interest of justice and equity."*

3. Respondent-Karnataka State Electronic Development Corporation Limited (hereinafter referred to as '**Respondent-KSEDCL**' for short), is stated to have been allotted work by the State of Bihar in furtherance of which Respondent-KSEDCL entered



into an agreement with the Petitioner-Excel Intelligence Services Private Limited (hereinafter referred to as the '**Petitioner-Excel**' for short) on 04.11.2016, which is governed by an Arbitration Clause in terms of 11.3, which is reproduced hereunder for easy reference:

*"11.3. The parties hereto agree that they will lose all reasonable efforts to resolve between themselves, any dispute through negotiations. Any dispute or difference between the parties arising out of the meaning of any interpretation or import of this Agreement or the rights and liabilities shall be mutually discussed and settled failing which it shall be adjudicated by reference to the Arbitration and the Arbitrator shall be the Managing Director of the KEONICS, Bangalore and whose decision shall be final and binding on the parties. The provisions of the Arbitration and Conciliation Act, 1996 is applicable to both the parties within the jurisdiction of Bengaluru."*

4. Subsequently, the Respondent-Datacon Tech Private Limited (hereinafter referred to as the '**Respondent-Datacon**' for short) entered into an agreement with the Petitioner-Excel on 06.03.2017 titled Inter-Company Services Agreement, which is also governed by an Arbitration Clause, which is reproduced hereunder for easy reference:



**"Dispute Resolution:**

- *Any dispute which arises between the Parties shall be attempted to be resolved by good faith discussions between the Parties.*
- *Where the Parties are unable to resolve such disputes by good faith discussions within a period of 30 (Thirty) business days from the date of a written notice by either Party notifying existence of such dispute, either Party shall be free to refer the dispute to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.*
- *The place and seat of Arbitration shall be Bangalore and the language of the Arbitration shall be English.*
- *The Arbitration shall be conducted by 1 (one) Arbitrator to be jointly appointed by the Parties. In case the Parties fail to appoint an arbitrator, within 30 (thirty) days from the submission of dispute for settlement through Arbitration, the Arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996."*

5. The Petitioner-Excel having caused a demand for the amounts due under the said Agreement on 25.02.2023, calling upon the respondents to make payment of the monies. The said payment not having been made, a further notice came to be issued on 04.04.2023 invoking the Arbitration Clause and nominating the Arbitrator on behalf of the Petitioner.



In reply thereto, Respondent-Datacon on the very same day i.e., on 04.04.2023 indicated that the proposal of initiating arbitral proceedings being similar to the matter pending at the High Court of Bihar in writ petition, arbitration proceedings could not be initiated. It is in that background that the Petitioner-Excel is before this Court.

6. Learned counsel for the Petitioner submits that:

6.1. All the agreements are interrelated inasmuch as Respondent-KSEDCL has been allotted to work by the State of Bihar. The said work has thereafter been outsourced by Respondent-KSEDCL to Respondent-Datacon, who have thereafter entered into an agreement with the Petitioner-Excel. All the agreements are governed by an Arbitration Clause. The disputes between the parties are required to be referred to Arbitration.



- 6.2. His submission is that even the writ petition pointed out by Respondent-Datacon in its email has come to a closure vide order dated 01.12.2022 passed by the Hon'ble High Court of Patna.
7. Learned counsel for Respondent-Datacon would submit that the claim made by the Petitioner is hopelessly barred by limitation inasmuch as the Agreement having been entered into in the year 2017, works having been carried out until the year 2019 and the invocation of the Arbitration Clause was made in the year 2023 is hopelessly barred by limitation and as such, an Arbitrator cannot be appointed.
8. Learned counsel for Respondent-KSEDCL would submit that the Agreement dated 06.03.2017 between the Petitioner-Excel, Respondent-Datacon, and Respondent-KSEDCL is not a signatory thereto. Insofar as the Agreement between Respondent-



KSEDCL and the Petitioner is concerned, there is no dispute. As such, the disputes cannot be referred to the Arbitration.

9. Heard Sri.Vishwas N., learned counsel for the Petitioner-Excel and Sri.Bhat Shankar Shivaram, learned counsel and Sri.Kiran N. Hegde, learned counsel for Respondent-Datacon, Sri P.M.Nayak, learned counsel for Respondent-KSEDCL. Perused the papers.

10. The points that would arise for consideration of this Court are:

- 1. Whether the Petitioner would be entitled to the benefit of the extension of limitation under the COVID orders passed by the Hon'ble Supreme Court of India?**
- 2. Whether Respondent-KSEDCL would also be bound by the Arbitration Clause in the Agreement dated 06.03.2017 at Annexure-A, even though Respondent-KSEDCL is not a party thereto and whether there being no dispute between the Agreement entered into between Respondent-KSEDCL and the Petitioner-Excel Intelligent Services Private Limited, could the disputes**



**under the Agreement between the Petitioner and Respondent-Datacon Tech Private Limited, be referred to Arbitration by making Respondent-KSEDCL as a party?**

**3. What order?**

11. I answer the above points as under:
12. **ANSWER TO POINT NO.1: Whether the Petitioner would be entitled to the benefit of the extension of limitation under the COVID orders passed by the Hon'ble Supreme Court of India?**

12.1. The Hon'ble Apex Court had an occasion to deal with this issue on the decision reported in the case of ***Arif Axim Co. Ltd. V. Aptech Ltd.,<sup>1</sup>***, more particularly at paras 86 and 87, which are reproduced hereunder for easy reference:

**86.** The operation and effect of the aforesaid order was considered and explained by a two-Judge Bench of this Court in *Prakash Corporates v. Dee Vee Projects Ltd.* as follows : (SCC p. 141, para 28)

"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801*] , this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [*Cognizance for Extension of Limitation, In re, (2021)*

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<sup>1</sup> (2024) 5 SCC 313



18 SCC 250] , this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. *A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [ Vide Section 15 of the Limitation Act, 1963.] ). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.*

*87. The effect of the above referred order of this Court in the facts of the present case is that the balance limitation left on 15-3-2020 would become available w.e.f. 1-3-2022. The balance period of limitation remaining on 15-3-2020 can be calculated by computing the number of days between 15-3-2020 and 27-3-2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the Petitioner from 1-3-2022, thereby meaning that the limitation period available to the Petitioner for invoking arbitration proceedings would have come to an end on 13-3-2023."*

12.2. The Hon'ble Apex Court has categorically come to a conclusion that the limitation period came to a standstill on 15.03.2020, and whatever balance limitation period was available could be calculated from the date on which the notification came to an end i.e. on 01.03.2022.



As such, the period between 15.03.2020 and 01.03.2022 is required to be excluded from the period of limitation to be calculated.

12.3. In that view of the matter, the works according to the Petitioner have been carried out till the year 2019, the bills raised thereafter, and according to the Respondents, the works having been carried out till January 2018, the period from 15.03.2020 to 01.03.2022 would have to be excluded.

12.4. Notice having been issued by the Petitioner on 25.02.2023, the said notice has not been complied with. The notice for invocation of the Arbitration Clause, having been issued on 04.04.2023, cannot *ex-facie* be set to be outside the period of limitation.



12.5. The Full Bench of the Hon'ble Apex Court in the case of **Delhi Development Authority Vs. Tejpal and others**<sup>2</sup> has held as under:

*"DA. COVID-19 Pandemic*

*"55. The fourth ground taken by the appellants is that the delay ought to be condoned on account of the COVID-19 Pandemic. At this juncture, it would be apposite to discuss the series of orders passed by this Court regarding the operation of limitation vis-à-vis the COVID-19 Pandemic.*

*56. Vide order dated 23-3-2020 in Cognizance for Extension of Limitation, In re this Court passed an omnibus order extending the period of limitation for proceedings before all courts/tribunals in the country from 15-3-2020 till further orders. Subsequently, vide an order dated 8-3-2021, this Court noted the lifting of the nationwide pandemic lockdown and a return to normalcy. Accordingly, the Court brought an end to the extension and held that: (Cognizance for Extension of Limitation, In re case, SCC p. 453, para 2)*

*"2. 2.1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.*

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<sup>2</sup> (2024) 7 SCC 433



*2.2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*

*2.3. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits b (within which the court or tribunal can condone delay) and termination of proceedings."*

*(emphasis supplied)*

**57.** *However, when COVID-19 cases across the country rose again, a miscellaneous application was filed and vide an order dated Cognizance for Extension of Limitation, In re, this Court restored the order dated 23-3-2020 and held that the period of limitation is to be extended till further orders. This came to an end on 23-9-2021 when directions to exclude the period between 15-3-2020 and 2-10-2021 from limitation were issued.*

**58.** *On account of the third wave of the pandemic, the aforementioned order dated 23-9-2021 was finally modified on 10-1-2022, with a total period of approximately 716 days between 15-3-2020 to 28-2-2022*



*being excluded from the operation of limitation.*

**59.** *The respondents submit that the orders of this Court passed by this Court from time to time as referred to above, would not come to the aid of the appellants since these orders saved only those actions and proceedings which were within the period of limitation as on 15-3-2020. They contended that the aforementioned orders ought not to be construed in a manner to resuscitate actions and proceedings that were time-barred before the onset of COVID-19 Pandemic. If the limitation period had already expired before the pandemic, such cases could not take shelter behind the general relief granted by this Court in Cognizance for Extension of Limitation, In re. The respondents buttressed their arguments by relying upon Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.*

**60.** *Sagufa Ahmed construed that the orders passed in Cognizance for Extension of Limitation, In re, were intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. We respectfully agree with the view taken in Sagufa Ahmed. Consequently, the benefit of Cognizance for Extension of Limitation, In re can be availed by the appellants only in a case where the period of limitation expired between 15-3-2020 and 28-2-2022."*

12.6. Even in this judgment, the Hon'ble Apex Court  
has come to a conclusion, taking into



consideration all three orders which had been passed during three waves of COVID-19, that the period from 15.03.2020 to 28.02.2022 would be excluded from the operation of limitation. If the limitation period were to expire within that period, the balance limitation period as available as on 15.03.2020, would have to be added after 28.02.2022.

12.7. In that view of the matter, though the contention of learned counsel for the Respondents is that the limitation period commenced from January, 2018, even if that were to be accepted, the period of limitation would come to an end in January, 2021, which is within the period as indicated supra, the limitation period as available on 15.03.2020 to January, 2021, which would have to be added. However, the contention of the learned counsel for the Petitioner is that the limitation period



commenced in the year 2019 and ended in the year 2022 and hence, the entire period would have to be added.

12.8. *Ex-facie*, these aspects cannot be considered at this stage in Section 11 proceedings. This matter would require trial as regards the date of invocation, the date of raising the bill and the dates of communication between the parties. It is, however, clear that from the period from 15.03.2020 to 28.02.2022, would have to be excluded even by the Arbitral Tribunal when dealing with the matter.

12.9. Hence, I answer point No.1 by holding that the above dispute cannot be set to be *ex-facie* barred by limitation. The issue of limitation is left open to be decided by the Arbitrator so appointed.

**13. ANSWER TO POINT NO.2: Whether Respondent-KSEDCL would also be bound by the Arbitration Clause in the Agreement dated 06.03.2017 at Annexure-A, even though Respondent-KSEDCL**



**is not a party thereto and whether there being no dispute between the Agreement entered into between Respondent-KSEDCL and the Petitioner/Excel Intelligent Services Private Limited, could the disputes under the Agreement between the Petitioner and Respondent-Datacon Tech Private Limited be referred to Arbitration by making Respondent-KSEDCL as a party?**

13.1. The contention of learned counsel for Respondent-KSEDCL is that Respondent-KSEDCL is not a party to the Agreement dated 06.03.2017 and is only a party to the Agreement dated 04.11.2016. Therefore, Respondent-KSEDCL cannot be bound by the Arbitration Clause. There is no dispute between Respondent-KSEDCL and the Petitioner-Excel insofar as that Agreement is concerned, as such, Respondent-KSEDCL cannot be made a party.

13.2. The facts which have been indicated above would categorically establish that the origin of the matter started with the contract awarded



by the State of Bihar to Respondent No.2, in pursuance of which Respondent-KSEDCL entered into an agreement with Respondent-Datacon and the Petitioner-Excel, initially for a smaller sum of amount and later for a larger sum, outsourcing more or less, the entire contract which had been awarded. Thus, the contractor being Respondent-KSEDCL, sub-contractor being the Petitioner. I am of the considered opinion that all the agreements being interrelated and forming a composite role for the very same work, Respondent-KSEDCL cannot seek to contend that it is not bound by the Arbitration Clause when the payments are required to be routed through Respondent-KSEDCL.

13.3. As such, I answer point No.2 by holding that Respondent-KSEDCL bound by the Arbitration Clause in the Agreement dated 06.03.2017 at



Annexure-A, even though Respondent-KSEDCL is not a party thereto and there being no dispute between the Agreement entered into between Respondent-KSEDCL and the Petitioner/Excel Intelligent Services Private Limited, the disputes under the Agreement between the Petitioner and Respondent-Datacon Tech Private Limited be referred to Arbitration by making Respondent-KSEDCL as a party.

**14. ANSWER TO POINT NO.3: What order?**

14.1. In view of my answer to point Nos.1 and 2, I am of the considered opinion that all contentions as regards limitation and otherwise including arbitrability would have to be left open for the Arbitrator to decide the matter.

**ORDER**

- i. CMP's are ***allowed***.



- ii. **Hon'ble Shri Justice V. Gopala Gowda**, a former Judge of the Hon'ble Supreme Court of India, is appointed as a sole Arbitrator to arbitrate the disputes between the parties.
- iii. The Arbitration to be carried out in Bangalore at the venue to be fixed by the learned Arbitrator. The parties shall appear before the learned Arbitrator on the date, time, and place as may be fixed by the Arbitrator.
- iv. All contentions, including arbitrability, are left open to be decided by the learned Arbitrator.
- v. Registrar (Judicial) is directed to forward a copy of this order to the Hon'ble Shri Justice V. Gopala Gowda, a former Judge of the Hon'ble Supreme Court of India at his Home Office.

**SD/-**  
**(SURAJ GOVINDARAJ)**  
**JUDGE**