WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-10-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

Arb Appeal No. 131 of 2026
CNR:{HCMA012185352026}
AND
CMP NO. 27692 OF 2026
Case QR

M/s.BGR Energy Systems Limited
Represented by its Authorised Representative,
No.443, Anna Salai,
Guna Complex,
Teynampet,
Chennai 600 018.

..Appellant (s)

Vs

TUV SUD South Asia Private Limited
Represented by its Authorised Representative,
TUV SUD House, Off Saki Vihar Road,
Saki Naka, Andheri (East),
Mumbai 400 072.

..Respondent(s)

Arbitration Appeal filed under Section 37(1)(A) of the Arbitration and Conciliation Act, 1996, r/w. Section 13(1) of the Commercial Courts Act, 2015, to set aside the order dated 03.09.2026 passed in I.A.No.2 of 2026 in C.O.S.No.125 of 2026 by the learned Principal Judge, Principal Commercial Court at Egmore, Chennai; allow I.A.No.2 of 2026 and refer the Appellant and Respondent to arbitration in respect of the disputes forming the subject matter of C.O.S.No.125 of 2026 in terms of the arbitration agreement incorporated into the Techno-Commercial Proposal dated 17.06.2019.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

For Petitioner(s): Mr.P.J.Rishikesh

For Respondent(s): Mr.E.K.Amalnath

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

Challenging the order passed by the learned Principal Judge, Principal Commercial Court, Egmore, Chennai, dated 03.09.2026, made in I.A.No.2 of 2026 in C.O.S.No.125 of 2026, rejecting the application filed by the appellant herein to refer the matter for arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, the present Appeal has been filed.

2.Brief facts of the case are as follows :

The respondent/plaintiff is a private limited company engaged in the business of certification, testing, auditing, inspection and training services. The appellant/defendant is a company engaged in providing engineering, procurement and construction services. The defendant approached the plaintiff for an independent technical evaluation services in connection with its ongoing projects and accordingly, after due deliberation, a contractual relationship came to be established between the parties. The plaintiff provided its services in accordance with the scope, specifications and standards agreed to by both parties. In course of their business, the plaintiff raised various invoices

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

corresponding to various services provided by them over a period of time. According to the plaintiff, the appellant/defendant is liable to pay a sum of Rs.37,45,109/-. Hence, the plaintiff filed a commercial suit in C.O.S.No.125 of 2026 on the file of the Principal Commercial Court, Egmore, Chennai, (hereinafter referred to as "Commercial Court") as against the defendant/appellant herein for recovery of a sum of Rs.37,45,109/- based on the agreement entered between the parties.

3.In the said suit, summons were served on the defendant/appellant on 02.04.2026 itself. However, the defendant did not file its written statement within the period of 30 days as mandated under the Commercial Courts Act, 2015. That apart, the defendant did not even file its written statement even within the extended time period of 120 days. Therefore, the defendant was set *ex parte* before the Commercial Court. The respondent/plaintiff, thereafter, filed its proof affidavit on 10.07.2026. At that stage, the appellant/defendant filed an application in I.A.No.1 of 2026 on 13.08.2026 under Order IX Rule 7 of the Code of Civil Procedure seeking to set aside the *ex parte* order, dated 16.06.2026, and permit the appellant to participate in the proceedings. The Commercial Court allowed the said application by order dated 03.09.2026 subject to payment of cost of Rs.7,000/-. However, while allowing the said application, the Commercial Court has clearly recorded that the right of the defendant to file written statement has already been forfeited, however, the

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

Court permitted the defendant to participate in the cross-examination.

4.At that stage, the appellant/defendant had taken out the present application in I.A.No.2 of 2026 under Section 8 of the Arbitration and Conciliation Act, 1996, seeking to refer the dispute for arbitration citing that there is an agreement existing between the parties.

5.The Commercial Court, by the impugned order dated 03.09.2026, taking note of the facts that summons were served on the appellant even on 02.04.2026 itself, but the defendant has not filed its written statement within the period of 120 days, as mandated under the Commercial Courts Act, 2015, held that the defendant, whose right to file the written statement had already been forfeited, cannot now seek reference under Section 8 of the Arbitration and Conciliation Act, 1996, in a commercial suit, and accordingly, dismissed the application.

6.Challenging the said order of the Commercial Court, the present Appeal has been filed by the defendant.

7.The main contention of the learned counsel for the appellant is that the entire dispute arises out of the contract between the parties. Clause 15 of the incorporated Standard Terms and Conditions provides for arbitration in the

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

event of any dispute between the parties. Hence, it is his contention that the Commercial Court, having permitted the appellant to participate in the proceedings and cross-examine the respondent/plaintiff side witnesses, the Commercial Court ought to have allowed the application filed for reference to arbitration. According to the learned counsel, the provisions of the Code of Civil Procedure only regulates the filing of the written statement and does not prescribe any period of limitation for filing an application under Section 8 of the Arbitration and Conciliation Act, 1996. It is his contention that Section 8(1) *ibid.*, states that the application for referring the matter for arbitration should be made not later than the date of submitting the first statement on the substance of the dispute. However, according to the learned counsel, the said provision does not take away the right of the party to seek for reference even after the right of filing written statement is forfeited, when admittedly there is an arbitral agreement exists between the parties. Hence, he would submit that the decision of the Hon'ble Supreme Court relied upon by the Commercial Court in ***SCG Contracts India Pvt. Ltd. v. K.S.Chamankar Infrastructure Pvt. Ltd. and others*** reported in ***2019 (12) SCC 210*** will not apply to the present case, as the said decision relates to the mandatory outer limit for receiving a written statement in a commercial suit, but does not decide the maintainability or limitation of an application under Section 8. It is his further contention that the Commercial Court did not go into the validity of the agreement and failed to exercise the jurisdiction vested in it under Section 8 of the Arbitration and

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

Conciliation Act, 1996, to examine the agreement. He would further submit that the decision of the Hon'ble Supreme Court in ***Booz Allen and Hamilton Inc. v. SBI Home Finance Limited*** reported in ***2011 (5) SCC 532***, also does not prescribe an independent time limit and mere passage of time in Section 8 application does not by itself establish submission to the jurisdiction of the Civil Court. Hence, he would submit that the delay in filing the written statement alone does not amount to waiver of right in referring the matter for arbitration. Hence, he would submit that the order of the Commercial Court rejecting the application filed by the appellant is not sustainable in the eye of law and thus, prays for interference.

8.Learned counsel appearing for the respondent/plaintiff refuted the contentions of the learned counsel for the appellant.

9.In the light of the submissions made on either side, the point that arise for consideration in this Appeal is as to whether the party, whose right to file written statement in the commercial suit is already forfeited, can still seek reference to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 ?

10.It is relevant to note that the Commercial Courts Act, 2015, came into force on 23.10.2015 and certain amendments were made in the Code of Civil

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

Procedure. The very object of the Act is to facilitate the ease of doing business and to speed up the disposal of the commercial disputes. Therefore, a strict timeline has been introduced for every stage of the commercial suit. One such amendment is with regard to the time limit in filing written statement in a commercial suit. Order V Rule 1 Sub-Rule (1) of the Code of Civil Procedure in the First Schedule has been amended to substitute the following proviso :

> **"***Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.***"**

11.Further, Order VIII Rule 1 of the Code of Civil Procedure has been amended to include the following new proviso :

> **"***Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date*

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."

12.Similarly, Order VIII Rule 10 of the Code of Civil Procedure has been amended to insert the following proviso :

> *"Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."*

13.Therefore, a perusal of the amendments introduced by the Commercial Courts Act, 2015, makes it clear that the written statement in a commercial suit shall be filed within a period of 120 days and not later than that. In this regard, the Hon'ble Supreme Court, in ***SCG Contracts India Pvt. Ltd. v. K.S.Chamankar Infrastructure Pvt. Ltd. and others*** reported in ***2019 (12) SCC 210***, has held that, beyond 120 days from the date of service of summons, the defendants shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record.

14.When the right of filing written statement itself is lost and such right is forfeited, the question remains whether still the party can invoke Section 8 of the Arbitration and Conciliation Act, 1996, to refer the matter for arbitration on the basis of the agreement between the parties.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

15.Section 8(1) of the Arbitration and Conciliation Act, 1996, reads as follows :

> ***"8.Power to refer parties to arbitration where there is an arbitration agreement. - (1)*** *A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than when submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."*

16.A perusal of the above provision makes it clear that, when the action is brought before the Civil Court which is the subject of the arbitration agreement, if a party to the agreement or any person claiming through or under him, applies not later than when submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, the Court can refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists. Therefore, in a civil suit, to seek reference, the party can exercise his option upto filing of the written statement. The expression *"not later than when submitting his first statement on the substance of the dispute",* in our mind, applies to the filing of written

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

statement. Therefore, we are of the view that the reference can be upto the stage of filing of the written statement alone and not beyond that. If the right of the party to file written statement has already been forfeited by the Statute, later, the party cannot seek reference as a procedural device to circumvent the time limit held to be mandatory in filing the written statement in commercial suits.

17.In this regard, it is useful to refer to the judgment of the Division Bench of the Delhi High Court in ***SPML Infra Limited v. Trisquare Switchgears Private Limited*** reported in ***2022 SCC Online Del 1914***, wherein, it is held as follows :

> ***"19.****If a party's right to file a statement of defence is closed, the same would also result in its rights accruing in favour of the other party. Clearly, at this stage, it would not be permissible for a party to apply under Section 8 of the A&C Act even though he has not expressly evinced any intention to contest the proceedings. It is implicit in the expression "not later than submitting the first statement of substance of the dispute" that the application under Section 8 of the A&C Act can be made at the stage when it is open for a party to submit such a statement. It, obviously, follows that once such a stage is crossed, the right of the party to apply under Section 8(1) of the A&C Act would also stand closed. The scheme of Section 8 of the A&C Act does not contemplate unraveling concluded proceedings. Once the right of a party to file the written statement of defence is closed, the proceedings in a suit progress beyond the stage of*

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

completion of pleadings. It is not open for the defendant to now seek a reference to arbitration. Although Section 8 of the A&C Act (as in force prior to 23-10-2015) did not specify any time-limit, it did indicate the stage of the proceedings at which a party could apply, that is, before filing of the first statement on the substance of the dispute. This clearly implies a stage at which such a statement could be filed and not thereafter.

...

23.*This amendment to Section 8 of the A&C Act, cannot be considered in isolation. It is material to note that the Parliament had also enacted the Commercial Courts Act, 2015 (Act 4 of 2016), which came into force on the same date as the Arbitration and Conciliation (Amendment) Act, 2015, that is, with effect from 23-10-2015. By virtue of Section 16 of the said Act, certain provisions of the CPC were amended in their application to any suit in respect of a commercial dispute of the specified value. The said provisions, inter alia, also included amendment to Order 8 Rule 1 and Order 8 Rule 10CPC. The proviso to Order 8 Rule 1CPC was substituted, which expressly provided that if the defendant failed to file a written statement within the prescribed period of thirty days, the court could, for reasons to be recorded in writing, extend further time to file the written statement. However, such extended time could not be later than 120 days from the date of service of summons. Further, the proviso to Order 8 Rule 10CPC was introduced, which expressly provided that no court would make an order to extend the time provided under Order 8 Rule 1CPC for filing of the written statement. Thus, the Parliament has curtailed the outer time-limit of filing of a written statement in a commercial suit to 120*

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

days after receipt of summons. The said amendment is obviously to ensure expeditious adjudication of commercial disputes."

18.By holding so, the Division Bench of the Delhi High Court has held that, if a party fails to file an application under Section 8(1) of the Arbitration and Conciliation Act for referring the parties to arbitration within the time available or granted for filing the first statement on the substance of the dispute (which would include a written statement in the context of a suit), the party would forfeit its right to apply under Section 8(1) of the Arbitration and Conciliation Act.

19.Similar view is also taken by the Division Bench of the Calcultta High Court in ***IDFC First Bank Limited and another v. Shyamsundar Distributor and another*** reported in ***2026 SCC Online Cal 5325.***

20.Another Division Bench of the Delhi High Court, in ***R.Santhosh v. One97 Communications Ltd. [RFA(COMM) No.130 of 2025, dated 12.06.2015]***, has also rejected the contention of the parties to refer the matter to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, when the right to file written statement has already forfeited.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

21.Similarly, another Division Bench of the Delhi High Court, in ***Hitachi Payments Services Pvt. Ltd. and another v. Shreyans Jain and another*** reported in ***2025 SCC OnLine Del 1042***, by following the decision in *SPML Infra's case (supra)*, has held that an application under Section 8 of the Arbitration and Conciliation Act, 1996, is not maintainable if filed beyond the period prescribed for filing of the written statement in commercial suits.

22.Further, a learned Single Judge of the Karnataka High Court, in ***Thangavelu R. v. Santhosh J. and another [C.R.P.No.262 of 2022 (IO), dated 12.12.2024]***, after referring to various precedents, has held as follows :

> ***"19.****In view of the legal principles established with reference to the unamended and amended Section 8 of the Act 1996, the application under Section 8 of the Act should have been filed within an outer limit of not later than 120 days as stipulated under amended Order 8 Rule 1 of CPC from the date of service of summons, which provides for filing of written statement.****"***

23.Similar view has also been taken by a learned Single Judge of the Bombay High Court in ***State Bank of India v. Surya Pharmaceuticals Ltd.*** reported in ***2025 SCC OnLine Bom 1133.***

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

24.In the light of the above judgments and also the provisions, when the Commercial Courts Act, 2015, itself has been introduced for the speedy disposal of the commercial disputes for the ease of doing business by introducing specific timelines at every stage of the commercial suit, which is held to be mandatory, and especially when the Act itself clearly stipulates the consequence of not filing the written statement within the prescribed time, i.e., forfeiture of the right of the party to file written statement, the appellant/defendant in the present case, having failed to avail the opportunity to file written statement within the time stipulated, cannot now seek for reference to arbitration. Merely because the appellant was permitted to participate in the proceedings to cross-examine the plaintiff side witnesses, the appellant cannot take advantage of the same and use Section 8 of the Arbitration and Conciliation Act, 1996, as a procedural device to circumvent the mandatory time limit introduced by the Commercial Courts Act, 2015. Hence, we do not find any merit in this Appeal.

25.Accordingly, this Arbitration Appeal is dismissed, confirming the impugned order of the Commercial Court. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K.,J.) (G.K.M.,J.)
06-10-2026

MKN

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

The Principal Judge,
Principal Commercial Court at Egmore,
Chennai.

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in

WEB COPY

N.SATHISH KUMAR J.
AND
GK.MUTHUKUMAAR J.

MKN

Arb Appeal No. 131 of 2026

06-10-2026

https://www.mhc.tn.gov.in/judis
IBC Laws | www.ibclaw.in