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**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****Arb. Case No. 375 of 2023**  
**Date of decision : 07.08.2026.**

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*M/s Snow Power Construction Pvt. Ltd.**.....Petitioner**Versus**M/s Continental Intra-Tech Pvt. Ltd. & another**..Respondents*

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*Coram:***The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.***Whether approved for reporting?*

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For the Petitioner: Mr. George, Advocate.

For the Respondents: Mr. Debender Ghosh, Advocate.

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**G.S. Sandhawalia, Chief Justice**

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for the appointment of an Arbitrator for the work order dated 21.03.2011 for the execution of civil work at Haripur Nallah Hydro Electric Project, District Kullu, H.P.

2. As per the averments made in the petition, certain payments were made, whereas

running bills to the tune of Rs.65,13,930/- were withheld, as per the Statement of Account dated 28.06.2012 (Annexure P-3).

3. The present petition has been filed on the strength of Clause 15, which provides that the dispute can be referred to arbitration. The notice as such for invoking arbitration proceedings is stated to have been sent on meaning of pandering in hindin 31.01.2015, followed by a second notice on 27.06.2019. An amount of Rs. 2,00,000/- is alleged to have been paid on 16.08.2016 after the receipt of the first notice and thereafter, an amount of Rs. 1,00,000/- in cash on 28.11.2016. However, after the second notice, the amount, as claimed, of Rs. 62,13,930/- alongwith interest, was not paid, on the basis of which, the present petition came to be filed on 06.03.2023.

4. A perusal of the second legal notice dated 27.06.2019, would go on to show that the claim as such was for the outstanding amounts by passing reference that the matter should be settled by way of

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arbitration which is not a formal notice issued under Section 21 of the Act for commencing arbitration proceedings.

5. The defence as such of the respondents is that a settlement had been arrived between the parties, the applicant had already received payments in terms of the settlement in the year 2015, hence nothing remains due to the applicant nor any notice duly subsists. A specific plea was taken by the respondents that the petition was barred by limitation with respect to the alleged claim arising out of the work order of the year 2011. On merits, it is mentioned that due to poor execution of the work, the petitioner had failed to complete the work and rest of the work was completed by other contractors. It is denied that the payment as claimed, had been withheld or that any dispute had arisen between the parties to the contract, which is liable to be resolved by way of arbitration under the provisions of the Act. The claim is, therefore, claimed to be barred by limitation for the amount alleged to be due as on

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13.12.2012. It is also denied that the amounts of Rs.2,00,000/- and Rs.1,00,000/- were ever paid by the respondents to the petitioner. Accordingly, it is pleaded that the petitioner remained silent for several years as per its own submissions and, therefore, the application would not be maintainable.

6. The averments were sought to be controverted by the petitioner by filing rejoinder (*sic* replication) by the petitioner, reiterating the pleadings as such.

7. The learned Counsel for the petitioner has accordingly submitted that since the parties had agreed to the modum of settlement by way of arbitration and Clause 15 thereof has not been denied, therefore, an Arbitrator should be appointed to resolve the issue. He further argued that limitation is a mixed questions of law and fact, which could be determined by the said arbitrator and thus, the learned Counsel pressed for the relief claimed.

8. Counsel for the respondents, on the other hand, has submitted that apparently even if claims

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are accepted, the first notice was issued only on 31.01.2015, wherein also, there is a mention of the arbitration clause and thereafter, the second notice was issued on 27.06.2019 and the period of three years as such would be a prescribed period from March, 2015 and filing of the petition as such, on 06.03.2023 would be patently barred. It is thus submitted that a one month's notice period was sufficient as such and due to non-action by the respondents as such, the petition should have been filed within three years from the service of the notice dated 31.01.2015. The petition having filed almost nine years later, is barred by limitation.

9. Reliance can be placed upon the judgment of passed by the Apex Court in ***M/S Arif Azim Co. Ltd. vs M/S Aptech Ltd., (2024) 5 SCC 313***, wherein it has been held that the arbitration proceedings should be initiated within a period of three years from the date of service of the notice and limitation should be counted from that date. Apparently, in the present case the petition has been

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filed much later and, therefore, cannot be treated as within limitation.

10. It is settled principle of law laid down in ***Vidya Drolia and Others Vs. Durga Trading Corporation (2021) 2 SCC 1***, that time-barred petitions are not to be entertained and limitation does not extinguish the right, but only bars the remedy. The said proposition of law was also followed in the judgment rendered in ***M/s Bharat Sanchar Nigam Limited & another Vs. Nortel Networks India Private Limited (2021) 5 SCC 738***.

11. In such circumstances, this Court is of the considered opinion that the filing of the Arbitration Application, at this belated stage, would not extend the period of limitation, even if subsequent notice was issued as the work was awarded in the year 2011 as such. Apparently, the petitioner has failed to take steps as such to recover the outstanding amount, if any, by resorting to the process of appointment of an arbitrator. Therefore, the respondents as such cannot be put to notice, after a

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period of more than a decade from the date when the letter of award was issued, as there is nothing on record showing that effective steps were taken to initiate the legal proceedings.

12. Accordingly, no plausible reason arises to allow this petition. Accordingly, the same is dismissed alongwith pending application(s), if any.

**(G.S. Sandhawalia)**  
**Chief Justice.**

**August 07, 2026**  
*(hemlata)*