

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order delivered on: 16th February, 2016*

+ **O.M.P. No.83/2015**

KIDDE INDIA LTD Petitioner
Through Mr.Chandan Kumar, Adv.

versus

BHARAT HEAVY ELECTRICALS LTD Respondent
Through Mr.Arvind Chaudhary, Adv.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting-aside the Award dated 10th October, 2014.

2. The respondent appointed the Arbitrator by letter dated 10th November, 2009 as per the agreement. The statement of claim was filed by the petitioner on 3rd March, 2010. The respondent filed the counter-claim in June, 2010. The following issues were framed by the Arbitrator:-

- “(i) Whether the claimants are entitled to the claims made in the statement of claim?
- (ii) Whether the claimants are entitled to the interest as claimed in the statement of claim?
- (iii) Whether the claimants are entitled to the cost as claimed in the statement of claim?

- (iv) Whether the claim filed by the claimants are time barred or not?”

3. The evidence of the parties was recorded by the Arbitrator on all the issues. However, the Award was passed mainly on the issue of limitation whereby the Arbitrator had come to the conclusion that after examining the case, he found that the cause of action accrued to the petitioner on 18th March, 1992 when the final bill was prepared. The arbitration clause was invoked on 15th October, 1997. Thus, the claim of the petitioner is beyond the period of three years. Therefore, all the claims of the petitioner are barred by limitation.

4. It appears from the Arbitral Award that the issues are framed on merits. The parties have also led their evidence on merits. However, the Award was passed only on the issue of limitation. The submission of the petitioner is that the claims of the petitioner are not barred by time. He submits that the cause of action in arbitration arises when a right is asserted and the same is denied, thus creating dispute. He has referred the following judgments:-

- “a) Cause of arbitration

Panchu Gopal Bose v. Board of Trustee for Port of Calcutta;
1993 Indlaw SC 1801/1993 (2) SCC 129, para 16.

- b) When a dispute arises

Major (Retd.) Inder Singh Rekhi v. DDA; 1988 Indlaw Supreme Court 417/1988(2) SCC 338, para 3.

- c) Until and unless dispute arises, Limitation cannot be said to begin for the purposes of Art 137.

Engineering Development Corporation v. MCD & another; 2009 Indlaw DEL 3393, para 5.

- (d) Time limit to approach Court is three years from the date of invocation of the arbitration clause, but since in this case, arbitrator was appointed by the Respondent and not by court, though belatedly, it cannot be said that such appointment is bad or illegal.

I.T.I. Limited v. Par Pressings and Another; 2009 Indlaw DEL 3535, paras 22-23.

5. The matter was partly heard on 11th February, 2016. Learned counsel for the respondent took time to take the instructions from his client with regard to the query raised by the Court that the Arbitrator has not passed the Award on all the issues framed by him. The matter was adjourned for today.

6. After small submissions again made by the learned counsel for the petitioner, it is agreed that let the matter be remitted back to the same Arbitrator who may decide the matter on merits, including the issue of limitation. Both the parties have submitted that they have paid a sum of Rs.3,07,655/- each as fee of the Arbitrator, thus, he may be requested to receive the nominal fee, as the main arguments are to be addressed by the parties. They are also agreeable to file the written submissions before the Arbitrator.

7. Under these circumstances, the matter is remanded back to the same Arbitrator who will decide the same on all the issues. As far as the impugned order is concerned, the same is set-aside. The Arbitrator will pass

the fresh award without the influence of the order passed by this Court or the impugned award. He is also requested to receive the sum of Rs.1 lac as fee which shall be shared by both the parties in equal proportions.

8. The petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 16, 2016

