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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
F-101.

+ **O.M.P. 284/2008**

JAY SOMNATH IRON WORKS Petitioner
Through: Mr. Chirag M. Shroff and Ms. Neha
Sangwan, Advocates.

versus

ENGINEERING PROJECTS (INDIA) LTD. Respondent
Through: Mr. Manoj K. Das, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **25.11.2016**

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an Award dated 28th March, 2008 of the sole Arbitrator dismissing the claims of the Petitioner on the ground of limitation.

2. The narration of facts by the Petitioner itself is that the Respondent was awarded a contract by Indian Oil Corporation on 14th July, 1998 for rail and road crossings for various pipelines at Kandla. This work was sub-contracted to the Petitioner by a work order dated 16th July, 1998. The total value of the work, as mentioned in the order, was Rs. 19,95,000. The work was to be completed within four months thereafter.

3. The Petitioner submitted an invoice in terms of the work done for a sum of Rs. 20,90,000 to the Respondent. According to the Petitioner, the work

has completed on 9th October, 1999. It is stated that long after the submission of the above final bill, a cheque of Rs. 9.89 lakhs (after deducting tax) “on ad-hoc account basis” was sent by the Respondent to the Petitioner on 21st March, 2000.

4. Thereafter, the Petitioner claims to have written several letters and made several telephonic calls to the Respondent. It did not receive any reply. Finally, on 16th February, 2005 the Petitioner wrote a letter to the Respondent invoking the arbitration clause which formed part of the terms and conditions of the work order. The competent authority of the Respondent appointed the General Manager as sole Arbitrator. In the impugned Award, it has been held by the sole Arbitrator that the cause of action has arisen on 9th October, 1999 when the final bill was raised by the Petitioner and that the invocation of the arbitration clause thereafter by the Petitioner and, therefore, the claim was time barred.

5. Learned counsel for the Petitioner referred to the decision of the Supreme Court in *Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority (1988) 2 SCC 338* and in particular to para 4 which reads as under:

“Therefore, in order to be entitled to order of reference under section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant

became entitled to the payment from that date and the cause of action under article 137 arose from that date. But in order to be entitled to ask for a reference under section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th February, 1983 and there was non-payment, the cause of action arose from that date, that is to say, 28th of February, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under section 8 or a reference under section 20 of the Act. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion in denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.”

6. The contention of learned counsel for the Petitioner, therefore, is that in the first place till such time there is a repudiation of a claim, even a dispute cannot be said to have arisen. Secondly, it is only when there is a denial of the claim of the Petitioner will the limitation begin to run.

7. The reading of the above passage in the manner suggested by learned counsel for the Petitioner is erroneous. What has been stated in the above passage is that for there to be a difference or dispute, there must be an

assertion of a claim and a repudiation of the claim. If there is no repudiation, the cause of action will arise from the date of assertion of the claim.

8. In the first place, when a part payment was made by the Respondent on 21th March, 2000, the Petitioner immediately thereafter made an assertion that it was not the complete payment and asked by a letter dated 24th May, 2000 that the complete payment be made. To this, there was no reply. This does not mean that the Petitioner could have waited for any number of years thereafter to seek the reference of the disputes to arbitration. The limitation, even in terms of the above passage in the judgment of the Supreme Court, began to run from 20th May, 2000.

9. It is not open to a party to wait endlessly to invoke an arbitration clause for reference of disputes to arbitration. The mere writing of any number of letters or reminders by one party to the other will not extend the period of limitation.

10. There is no error committed by the learned Arbitrator in holding that in the facts and circumstances of the case, the claim of the Petitioner is barred by limitation. The petition is, accordingly, dismissed.

S. MURALIDHAR, J

NOVEMBER 25, 2016
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