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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 489/2015

AESHWAR SINGH

..... Petitioner

Through: Mr. V.D. Muley and Mr. Shiv Khorana,
Advocates.

versus

C. P. GOENKA

..... Respondent

Through: Mr. Anvar Qamaruddin, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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09.11.2016

1. This is a petition seeking reference of the disputes between the parties arising out of an agreement dated 26th August, 1985 to arbitration.

2. By the said agreement, the Respondent had agreed to take over the liabilities of the Petitioner who was, at that stage, in control of Nagarjuna Paper Mills Ltd. ('NPML') on payment of some consideration. Admittedly, the said payment was made to the Petitioner. The real grievance is that despite the Respondent agreeing that he would replace all the guarantees and securities given by the Petitioner to banks and financial institutions including the Andhra Pradesh Industrial Development Corporation Limited ('APIDCL'), the Respondent allegedly failed to do so.

3. The Petitioner states that he came to know of the failure of the

Respondent to comply with the above obligations only when it received a notice dated 12th June, 2007 from APIDCL calling upon the Petitioner to honour the guarantee for an advance term loan given by the APIDCL to NPML.

4. As a result of that notice, the Petitioner had filed Writ Petition (Civil) No. 936977 of 2007 in this Court which ultimately came to be disposed of by an order dated 28th October, 2013 recording the fact that the Petitioner had tendered to APIDCL cheques aggregating to Rs.12,35,416. According to the learned counsel for the Petitioner, the cause of action vis-a-vis the Respondent arose only on 28th October, 2013 and the Petitioner thereafter issued a demand notice dated 1st April, 2014. This was followed by another notice dated 19th May, 2015 invoking the arbitration clause and calling upon the Respondent to recompense the Petitioner for the amounts that the Petitioner had to pay APIDCL.

5. A preliminary objection has been raised by learned counsel for the Respondent about the present claim being barred by laches.

6. In the first place, the Court is unable to appreciate how the Petitioner could have not been aware of the non-compliance by the Respondent of its obligations under the agreement dated 26th August, 1985 for a period of 22 years thereafter. In the natural course of conduct, the Petitioner would have informed APIDCL of the agreement entered into between the parties and that the guarantees provided by the Petitioner to APIDCL stood cancelled. That the Petitioner did not do so is indeed surprising.

7. Even assuming that the Petitioner was not aware at that stage, certainly, the Petitioner was aware of the guarantees not having been replaced by the Respondent when the Petitioner received a notice from APIDCL on 12th June, 2007. There is absolutely no explanation why no legal demand notice was issued by the Petitioner to the Respondent on receipt of the notice dated 12th June, 2007 from APIDCL.

8. The Court is unable to accept the submission of learned counsel for the Petitioner that the Petitioner's cause of action for the demand against the Respondent arose only after the Petitioner made payment to APIDCL as recorded in the order dated 28th October, 2013 in Writ Petition (Civil) No. 6977 of 2007. Consequently, this Court accepts the plea of the Respondent that the claim in this petition is hopelessly time barred.

9. The petition is, accordingly, dismissed.

S. MURALIDHAR, J

NOVEMBER 09, 2016/dn