

\$~4

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

+ **ARB.P. 77/2017**

ARVIND KUMAR JAIN

..... Petitioner

Through: Mr S.W. Haider, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr Jagjit Singh, Sr. Standing Counsel
for Railways with Mr Preet Singh and
Mr Sukhdev Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **11.04.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 26.04.2011 (hereafter 'the Agreement').

2. There is no dispute as to the existence of the arbitration agreement (arbitration clause). The only objection raised by the respondent is that the present petition is barred by limitation. The documents produced on record indicate that the final bill had been paid to the petitioner on 25.10.2011. The petitioner had made a request for arbitration for the first time on 01.10.2012 and the learned counsel for the petitioner states that the arbitral proceedings commenced from the said date in terms of Section 21 of the Act.

3. The petitioner's request for arbitration was admittedly declined on 12.03.2013 on the ground that the claims made by the petitioner fell within the scope of excepted matters. Subsequently, the respondent also denied the request for arbitration on the ground that the petitioner had submitted a No Claim Certificate at the time of payment of the final bill and therefore, the Agreement was discharged.

4. The present petition was taken up for hearing on 30.03.2017 and on that date, the counsel for the petitioner sought time to produce documents to indicate that the present petition was in time and all claims were within the period of limitation. The learned counsel for the petitioner states that certain documents have been filed but the same are not on record. However, a copy of the same has been handed across by the learned counsel for the respondent. A bare perusal of the said documents supports the contention of the respondent that there has been no acknowledgement/communication by the respondent, which can be construed to extend the period of limitation.

5. Clearly, the cause of action for filing the petition had arisen when the petitioner's request for arbitration was declined; first on 12.03.2013 and thereafter in April, 2013. The present petition has been filed in January, 2017.

6. The learned counsel for the petitioner referred to the letter dated 24.04.2015, whereby the respondent had called upon the petitioner to clearly indicate the claims to be adjudicated by the arbitrator. He submitted that the period of limitation for filing the present petition must be reckoned from the said date. It is seen that the letter dated 24.04.2015 was sent in response to

the petitioner's letter which was received by the respondent on 27.02.2015. The said letter dated 24.04.2015 also does not further case of the petitioner in any manner as the last lines of the letter clearly indicate that the particulars of the petitioner's claims were called for only to consider the request for appointment of an arbitrator. The request of the petitioner in respect of the claims pertaining to the agreement dated 26.04.2011 had been denied earlier and the present letter - which, at best, indicated that petitioner's request was to be considered - would not amount to extending the period of limitation to file the present petition.

7. No specific period provided for filing the present petition is provided. Thus, the period of limitation for filing the present petition must be construed to be three years. The present petition having been filed beyond the period of three years is plainly barred by limitation and is, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 11, 2017

pkv