

AP No. 200 of 2020
IA No. GA 1 of 2020 (Old No. GA 878 of 2020)
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

M/S. REMCO AND CO.
VERSUS
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 9th March, 2021.

(Via Video Conference)

Appearance:
Mr. Debjyoti Basu, Adv.
For the petitioner.

Mr. M.M. Verma, Adv.
Mr. Rajesh Kumar Shah, Adv.
For Union of India.

The Court :- In this petition under Section 11[6] of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an Arbitrator to arbitrate the disputes between the parties.

The arbitration agreement is not disputed.

Learned Advocate appearing for the respondents draws the attention of the Court to the letters dated September 22, 2009 and February 6, 2010 issued by the petitioner and/or on its behalf to contend that, the petitioner invoked the arbitration clause on February 6, 2010 and that, the petitioner filed under

Section 11[6] of the Act of 1996 in 2020. He submits that, the claim of the petitioner is barred by limitation. The claim for arbitration is also barred.

Learned Advocate appearing for the petitioner submits that, the demand for arbitration was repudiated for the first time on February 25, 2020 subsequent to which, the petitioner filed the application under the Act of 1996 sometime in June 2020. Therefore, he submits that, there is a distinction between the claim being barred by limitation, which the arbitrator should adjudicate upon, and the claim for arbitration being barred by limitation, which Court should look into. In the facts of the present case, he contends that, since the repudiation of the respondents to appoint an arbitrator happened only on February 25, 2020, and the petition for appointment of an arbitrator being filed in 2020, the claim for arbitration, therefore, cannot be said to be barred by limitation.

With respect to, I am unable to accept the contentions on behalf of the petitioner. The petitioner invoked the arbitration agreement by the letter dated February 6, 2010. The petitioner did not take any steps with regard to the arbitration at all. The petitioner was not required to await the purpose of the respondents to approach the Court under Section 11 of the Act of 1996. It is only on February 25, 2020 the respondents reacted to a letter dated January 31, 2020 of the petitioner asking for arbitration. In the letter dated February 25, 2020 the respondents took the stand that, the claim for arbitration is barred by limitation.

Since the petitioner did not approach the Court for arbitration within three years from February 6, 2010, I am unable to refer the disputes to arbitration as prayed for.

AP No. 200 of 2020 is, therefore, dismissed without any order as to costs.

In view of the disposal of AP No. 200 of 2020, no order need be passed in IA No. GA 1 of 2020 (Old No. 878 of 2020), the same is also disposed of.

(DEBANGSU BASAK, J.)

snn.