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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY THE 06TH DAY OF AUGUST 2021

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.P.NO.454 OF 2014

In the matter of Arbitration and
Conciliation Act, 1996,

And

In the matter of Agreement
Dated 19.08.2009 entered into
between the Petitioner and the 1st
Respondent and Tripartite
Agreement dated 17.01.2010
between the Petitioner and the
Respondents.

M/s.Varalakshimi Starch Industries (P) Ltd.,
Rep. by Managing Director,
V.Anbalagan,
“Varalakshmi Tower”
2nd Floor, 127/1 Gandhi Road,
Hasthampatty,
Salem – 636 007.
Tamil Nadu.

...Petitioner

Vs

1. M/s.MAN Rollo Power Generation India Private Limited,
Having its Registered Office At:
171/9, Somdutt Chambers-II,
Bhikaji Cama Place,
New Delhi-110 066.
Also having its Corporate Office at:
58/A, Tuem Industrial Estate,
Tuem, Pernem,
Goa – 403 512, India.



2. M/s.Power Engineering (India) Pvt. Ltd.,

Having its registered office at,

58/A, tuem Industrial Estate,

Tuem, Pernem, Goa – 403 512

Also Having its Cojrporate Office at

503-504, 5th Floor, Cosmas Centre,

Nr.Municipal Market,

Mhapsa, Bardez,

Goa- 403 507, India.

...Respondents

Original Petition praying that this Hon'ble Court be pleased to

(a) appoint an arbitrator in respect of the disputes between the petitioner and the respondents as set out in this petition.

(b) Direct the respondent to pay the cost of this petition.

This Original Petition having been heard on 26.07.2021 in the presence of Mr.V.P.Sengottuvel, advocate for the petitioner herein and Mr.N.Manokaran, advocate for the 1st respondent herein and Mr.N.Jyothi for Mr.T.R.Sundaram, advocates for the 2nd respondent herein and upon reading the petition filed herein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that the petition itself filed beyond the period of three years and the petition has been filed only on 24.07.2014, which is beyond the period of three years from the date of dispute 26.03.2010, besides notice



not maintainable and the same is liable to be rejected and **it is ordered as**

follows:-

That the O.P.No.454 of 2014 be and is hereby dismissed.

2. That the suit has been filed against the petitioner pending before the Senior Civil Judge, Goa and it is for the petitioner to raise all his defence by way of counter claim in the above suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 06TH DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments.



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12/10/2021

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O.P.No.454 of 2014

ORDER

DATED : 06.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL:21/10/2021

APPROVED ON:21/10/2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
20~07~2021	06-08~2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P. No. 454 of 2014

M/s. Varalakshmi Starch Industries (p) Ltd.

Rep. by Managing Director, V.Anbalagan,

“Varalakshmi Tower”,

2nd Floor, 127/1 Gandhi Road,

Hasthampatty , Salem – 636 007,

Tamil Nadu.

... Petitioner

-VS-

1. M/s. MAN Rollo Power Generation India Private Limited,

Having its Registered Office at:

171/9, Somdutt Chambers – II,

Bhikaji Cama Place,

New Delhi- 110 066

Also Having Its Corporate Office At:

58/A, Tuem Industrial Estate,

Tuem, Pernem,

Goa- 403 512, India

2 .M/s. Power Engineering (Indi) Pvt. Ltd.,

Having its Registered Office at:

58/A, Tuem Industrial Estate,

Tuem, Pernem,Goa- 403 512,



Also Having Its Corporate Office at:

503-504, 5th Floor, Cosmas Centre,
Nr. Municipal Market,
Mhapsa, Bardez,
Goa,- 403 507, India.

...Respondents

PRAYER: Original petition is filed under section 11(6) of The Arbitration and Conciliation Act, 1996 to appoint an arbitrator in respect of the disputes between the petitioner and the respondent as set out in this petition with cost.

For Petitioner : Mr.V.P. Sengottuvel

For Respondents : Mr.N. Manokaran for R1
Mr.N. Jyothi for
Mr.T.R. Sundaram for R2

ORDER

This Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to decide the disputes that have arisen between the Petitioner and the Respondents.

2. 1st Respondent M/s. MAN Rollo Power Generation India Private Limited is a company carrying on the business of trading, marketing, import, export, distributorship, packaging of machineries and equipments especially of Power Generator Equipments and Gas Engines, their parts / components, instruments / devices / apparatus / articles / accessories,



fittings and things including their assembly, manufacture, fabrication, supply, erection, distribution, alteration, reassembly, remodel, exchange, commission, install or otherwise deal in all kinds of equipments and machines, devices, instruments, including their modules and their sub-assemblies / components. The 2nd Respondent – Power Engineering India (P) Ltd., is in the business of manufacturing, marketing, renting and servicing diesel generating sets and components thereof.

3. The Petitioner during the year 2008 – 2009 proposed to establish Maize Starch Plant and to install 1.083 MW equivalents Biomethanation Plant and 2.744 MW capacity captive power plants. Accordingly, the Petitioner entered into an agreement dated 19.08.2009 with the 1st Respondent for Engineering supply, erection, commissioning, test run, trial run and performance test and maintenance of the Bio-gas fuel based Gen sets. Accordingly, agreement was entered for purchase of 8 Gen sets, 4 Gen sets to be delivered before 10th December 2009 and remaining 4 Gen sets with auxiliaries shall be delivered before March 2010. Article 14 of the Agreement related to the Arbitration, which reads as follows:

“14.1. All disputes arising from the execution of or in connection with the present Agreement shall be settled through friendly consultation between the parties. In case no Agreement can be reached



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through consultation, the disputes shall be submitted to Arbitration for settlement.”

4. It is not disputed that the agreement was amended on 21.09.2009 and 29.12.2009. Thereafter Tripartite Agreement dated 17.01.2010 was entered into between the parties, where the 2nd Respondent was become a party in the Agreement. As per the above agreement, the 1st Respondent shall stand discharged of all its obligations under the contract and 2nd Respondent shall stand committed to abide by and fulfil all the contractual obligations contained in the contract in place of Man Rollo, the 1st Respondent. It appears that 4 Gen sets were supplied after receipt of money. However, the petitioner raised some dispute to the quality of the Gen sets and spare parts instead of invoking the provision in the contract to refer the dispute to the Arbitration. It appears that a criminal complaint was lodged against the Respondent on 4.10.2010 for the offence of cheating and fraud etc., Subsequently, CrI.O.P.No.27542 of 2010 was filed for a direction to register a criminal case. The above O.P. was disposed by this Court vide order dated 14.12.2010. Pursuant to the above orders FIR in Cr.No.209 of 2010 was registered against the Respondent under Section 420 r/w 34 of I.P.C. On 29.12.2010. Thereafter it appears second Respondent invoked Arbitration by sending a notice dated 9.9.2012, which was objected by the Petitioner herein. Now the Petitioner has filed this Application for



Appointment of Arbitrator mainly on the ground that since the parties are governed by the Contract, the dispute has to be referred to the Arbitration.

5. Though it is not stated by the Petitioner in their Petition, it is admitted fact that the petitioner has filed a consumer complaint in Complaint No.297 of 2012 before the National Consumer Disputes Redressal Commission, New Delhi on 03.12.2012, which was also dismissed and reached the finality. In the meanwhile the Respondent also filed CrI.O.P.No.17261 of 2012 for quashing the criminal proceedings. This Court has dismissed the above CrI.O.P. In the meanwhile, 2nd Respondent filed a suit in C.S.No.58 of 2014 before the Senior Civil Judge, Goa, where the present Petitioner has filed Section 8 Application, which appears to be pending. The present O.P. has been filed on 18.07.2014 mainly on the ground that the parties are governed by the Contract since there is a clause for Arbitration agreed upon by the parties, matter has to be referred to the Arbitrator. It is the main contention of the Petitioner that the Respondent during the bail application and quash petition all along took a stand that the matter has to be referred to the Arbitrator and the Respondent also filed an application for appointment of arbitrator in Diary No.1460. Therefore,



the contract governing the parties to refer the matter to the Arbitration.

Hence it is his contention that an Arbitrator has to be appointed.

6. Though elaborate Counter has been filed, the main objection of the 1st Respondent is that as per the Tripartite Agreement they have been discharged and further the Application for appointment of Arbitrator is barred by limitation. The claim is also hopelessly barred and no notice of invocation was also issued.

7. Mr.V.P. Senkkottuvel, learned counsel appearing for the Petitioner submitted that Arbitration clause is not disputed. Though the dispute arose in the year 2010 in respect of the supply Gen sets, police complaint has been lodged for criminal offence committed by the Respondent. Therefore, merely because the police complaint lodged, it cannot be said that the claim is hopelessly barred. Even when the application for Anticipatory Bail and application filed before the Court for quashing the criminal proceedings, the categorical stand of the Respondent that they were governed by the contract, the matter has been referred to the Arbitration. Having taken such stand, now it cannot be contended that the claim is hopelessly barred. It is his contention that the 2nd Respondent themselves issued notice for invoking Arbitration on 09.09.2012. Hence, this Petition has been filed within a period of three

years. Therefore, same is well within the period of limitation. Hence



submitted that the issue of the limitation is mixed question of law and facts and the same cannot be barred at this stage. What has to be seen is only the existence of Arbitration Agreement. When the Respondent themselves admitted the existence of Agreement and took a stand that the matter is referable to the Arbitration, now they cannot object the appointment of Arbitrator.

8. In support of his contention he relied upon the following judgments:

1. VidyaDrolia And Others –Vs- Durga Trading Corporation [(2021) 2 SCC 1]

2. Vijay Kumar Sharma Alies Manju –Vs- Raghunandan Sharma Alies Baburam And Others [(2010) 2 SCC 486]

3. BSNL –Vs- Nortel Networks India Pvt, Ltd. [2021 SCC Online Sc 207]

4. Secunderabad Cantonment Board –Vs- B. Ramachandriah & Sons [2021 Scc Online Sc 219]

5. Shree Ram Mills Ltd., -Vs- Utility Premises (P) Ltd. [2007 (4) SCC 599]

6. Mmtc –Vs- Shive Sahai & Sons & Another [2014 (5) LW 722]

7. Jansamma Regi -Vs- Usha Mani & Another [2018 SCC Online Ker 7868]



9. Mr.N. Manokaran, and Mr.N. Jothi, learned counsels appearing for the Respondents 1 and 2 respectively, submitted that this Petition filed under Section 11(6) of the Arbitration and Conciliation Act is not maintainable. The procedure agreed upon between the parties has not been followed. Mere correspondence and exchange of notices will not extend the period of limitation. In this Petition, consumer complaint filed in the year 2012 is suppressed. Besides, when the notice of invocation sent by the 2nd Respondent for Arbitration, the application was rejected for reference outrightly. Therefore, now without invoking the Arbitration clause without issuing notice, he cannot seek for appointment of Arbitrator under Section 11 of the Act. Hence prayed for dismissal of the Petition. In support of their contention they relied upon the following judgments :

*1. Anil, S/o. Jagannath Rana and others –
vs- Rajendra Radhakrishna Rana and ors.
[(2015) 1 MLJ 378 (SC)]*

*2. Chetak Construction Ltd. –vs- Om
Prakash and Others [1998 (4) SCC 577]*

*3. Shyam Sundar Agarwal –vs- P.
Narotham Rao and others [(2018) 8 SCC 230]*



4.S.N. Hamsapriya –vs- T.R. Krishnamurthy [C.R.P.(PD) NO. 2160 of 2011 dated 21.12.2018 (MHC)]

5.The member concern department of post –vs- Ms.Annapoorani and 5 others [2005 (4) LW 206]

6.H.G. OomerSait and another –vs- O.Asalam Sait [2002(2) LW 187]

7.N.Radhakrishnan –vs- Maestro Engineers and others[(2010) 1 SCC 72]

8.Booz Allen and Hamilton Inc. –vs- Sbi Home Finance Ltd. And others [(2011) 5 SCC 532]

9.The Kerala State Electricity Board Trivendrum –vs- T.P.Kunhaliumma [(1976) 4 SCC 634]

10.G.Sreekanth, s/o G.Ranganathan –vs- Kasi Housing Development Ltd.[2020(6)CTC 741]

11.Management Committee of Montfort Senior Secondary School -vs- Vijay kumar and others [2005 (7)SCC 472]



*12.SBP&Co. –Vs- Patel Engineering
Ltd. And Another [2005 (8) SCC 618]*

*13.M.R.Engineers And
ContractesPrivate Lid. –Vs- SomDatt Builders
Limited [(2009) 7 SCC 696]*

*14.Naveen Housing And Properties Pvt.
Ltd. –Vs- Watermarks Residency Limited [2017
(3) CTC 535]*

*15.India Household And Healthcare Ltd
–Vs- Lg Household And Healthcare Ltd.
[(2007) 5 SCC 510]*

*16.Amk & Co. –Vs- Deputy Chief
Materials Manager [2012 (4) CTC 271]*

*17.JagadishChander –Vs- Ramesh
Chander And Others[(2007) 5 SCC 719]*

10. This Petition has chequered history. A.No.1828 of 2015 was taken out by the 2nd Respondent seeking to defer the further hearings of the proceedings in this O.P.No.454 of 2014 on the ground that since Application under Section 8 of the Arbitration and Conciliation Ac has already preferred in the suit filed by the 2nd Respondent before the Civil



Court, Goa. The above application was ordered by the then Chief Justice on 10.04.2015. Despite such order now both sides have made an endorsement that this Court can dispose the main O.P. itself on merits. They made an endorsement in this regard. Order has been passed by this Court in the above application on the premise that Section 8 Arbitration and Conciliation Act application before Civil Court would be disposed of. However, some or other, the matter has been prolonged till date and no order has been passed. Both sides one or other protracting the matter. Accordingly, both sides appeared before this Court have agreed the dispose of the matter on merits. Hence, this Court despite the order of deferment passed by the Court earlier, decided to dispose of the matter taking note of the delay in this matter pending from 2014.

11. The Petitioner and the 1st Respondent entered into an agreement dated 19.08.2009 for the purchase of 8 Gen sets. Article 14 of the agreement defines the Arbitration Clause. A Tripartite Agreement entered on 17.01.2010 makes that all the contract has been transferred in favour of the 2nd Respondent, in fact, 1st Respondent stands discharged.

12. Be that as it may. Supply of 4 Gen sets was originally supplied

. The dispute raised by the Petitioner that the supply was not according



to the terms of the contract and without proper spare parts. A notice was also issued in this regard on 26.03.2010. In the reply notice the Respondent has agreed to set right the defects if any, before 22.04.2010. Though the parties are governed by the contract to refer the dispute for Arbitration after exhausting the friendly consultation between the parties, without exhausting such process, criminal complaint appears to have been lodged for cheating, against both the Respondents on 04.10.2010 despite the fact that the 1st Respondent discharged in view of the Tripartite Agreement.

13. Be that as it may. Based on the orders of this Court in CrI.O.P.No.27542 of 2010 dated 14.12.2010 FIR was registered by the Police against the Respondents on 29.12.2010 u/s 420 r/w 34 of I.P.C. In the meanwhile 2nd Respondent issued notice on 09.09.2012 for referring the dispute to the Arbitration, for which a reply has been sent by the Petitioner, outrightly rejecting the reference by taking a stand that since the serious allegation of fraud and manipulation of account to cheat has raised against the Respondent, the same cannot be decided by Arbitration. This reply was sent by the Petitioner on 28.12.2012 and it appears that the Respondent has moved before this Court to quash the FIR filed against them, in CrI.O.P.No.17261 of 2012 mainly on the ground that the dispute is arbitrable and the parties are governed by the



arbitration. This court, however, dismissed the above application held that the relevant arbitration clause and other question will not have to be allowed to continue further in view of the criminal prosecution is launched. It appears that the above order was also challenged before the Apex Court and the same was also dismissed. In the meanwhile the Respondent has obtained Anticipatory Bail vide order dated 19.12.2013 which was challenged by the Petition before the Apex Court. The SLP which also appears to be dismissed. The 2nd Respondent has also filed application before this court for appointment of Arbitrator on 11.11.2013. But no order has been passed in that petition till date. It is also relevant to note that a complaint was also filed before the National Consumer Disputes Redressal Commission by the Petitioner for the deficiency of service, which was dismissed by the National Consumer Disputes Redressal Commission on 3.12.2012 itself, wherein the complaint was dismissed at the admission stage itself and held that nothing will preclude the complaint to seek remedy from appropriate forum or civil Court. Even after dismissal of the complaint before the National Commission, no action has been taken either to invoke the arbitration clause by the Petitioner herein. This application has been filed for appointment of Arbitration under Section 11(6) of the Act on



issued to invoke arbitration by the Petitioner. Though the dispute arose in the year 2010, from the date of reply on 26.03.2010, the Petitioner have not issued any notice for invocation of Arbitration. Now, the contention of the learned counsel for the Petitioner that since the Respondent has invoked Arbitration and issued notice he can very well file Petition under Section 11 of the Act. It is to be noted that the appointment of Arbitrator under Sections 11 (4) to 11(6) come into play only when a party fails to appointment of Arbitrator within 30 days from the date or receipt of request from the other party. Section 11(4) to 11(6) of the Arbitration Conciliation Act, 1996 read as follows:

11.Appointment of arbitrators.—

(1)

(2)

(3)

(4) *If the appointment procedure in sub-section*

(3) applies and—

(a) a party fails to appoint an arbitrator

within thirty days from the receipt of a

request to do so from the other party; or

(b) the two appointed arbitrators fail to

agree on the third arbitrator within

thirty days from the date of their

appointment,

<https://hcservices.ecourts.gov.in/hcservices/> *[the appointment shall be made, on an application of the party, by the Arbitral*



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institution designated by the Supreme Court in case of international commercial arbitration or by the High Court in the case of arbitrations other than international commercial arbitration as the case may be]

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [the appointment shall be made on an application of the party in accordance with the provisions contained in sub-Section 4], upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

[the appointment shall be made on an application of the party designated by the Supreme Court, in



and Conciliation Act, 1996, make it very clear that the proceedings will be commenced on the date on which a request for dispute to be referred to Arbitration is received by the Respondent. Therefore, the notice of invocation is very much essential in view of the provision under Section 11 of the Act, which has not been done so. Further the Petitioner has cautiously prosecuting the matter in criminal side, consumer forum and also challenged the bail application before the Apex Court, even then the Petitioner has not referred the matter to the Arbitration. Even, when the Respondent issued a notice the petitioner did not agree for that.

15. Though Section 11 of the Arbitration and Conciliation Act does not stipulate any time period for filing application under sub-Section 6 for appointment of Arbitrator, Article 137 of the Limitation Act come into play, period of limitation within three years from the date of issuance of notice invoking arbitration and received by other side. In such case the period of limitation would be 3 years.

16. The judgment of the Apex Court in ***BSNL –Vs- Nortel Networks India Pvt,Ltd. [2021 SCC Online Sc 207]*** it is held as follows:

*13. It is now fairly well-settled that the limitation for filing an application under **Section 11** would arise upon the failure to make the appointment of the arbitrator within a period of 30 days' from issuance of the notice invoking*



arbitration. In other words, an application under [Section 11](#) can be filed only after a notice of arbitration in respect of the particular claim(s) / dispute(s) to the arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment 3 (2008) 7 SCC 169.

the same makes it very clear that notice invoking the arbitration is necessary to file an application under Section 11 of the Act.

17. In para 32 to 34 of the above judgment the Apex Court has held as follows:

“32. Issue of Limitation

Limitation is normally a mixed question of fact and law, and would lie within the domain of the arbitral tribunal. There is, however, a distinction between jurisdictional and admissibility issues. An issue of ‘jurisdiction’ pertains to the power and authority of the arbitrators to hear and decide a case. Jurisdictional issues include objections to the competence of the arbitrator or tribunal to hear a dispute, such as lack of consent, or a dispute falling outside the scope of the arbitration agreement. Issues with respect to the existence,



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scope and validity of the arbitration agreement are invariably regarded as jurisdictional issues, since these issues pertain to the jurisdiction of the tribunal.

33. Admissibility issues however relate to procedural requirements, such as a breach of pre-arbitration requirements, for instance, a mandatory requirement for mediation before the commencement of arbitration, or a challenge to a claim or a part of the claim being either time-barred, or prohibited, until some pre-condition has been fulfilled. Admissibility relates to the nature of the claim or the circumstances connected therewith. An admissibility issue is not a challenge to the jurisdiction of the arbitrator to decide the claim.

34. The issue of limitation, in essence, goes to the maintainability or admissibility of the claim, which is to be decided by the arbitral tribunal. For instance, a challenge that a claim

is time-barred, or prohibited until some pre-



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condition is fulfilled, is a challenge to the admissibility of that claim, and not a challenge to the jurisdiction of the arbitrator to decide the claim itself.

18. Further, in para 41 of the above judgment the Honourable Apex Court has categorically held as follows:

41. The present case is a case of deadwood / no subsisting dispute since the cause of action arose on 04.08.2014, when the claims made by Nortel were rejected by BSNL. The Respondent has not stated any event which would extend the period of limitation, which commenced as per [Article 55](#) of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the Final Bill by making deductions.

In the notice invoking arbitration dated 29.04.2020, it has been averred that:

“ Various communications have been exchanged between the Petitioner and the Respondents ever since and a dispute has arisen between the Petitioner and the



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Respondents, regarding non payment of the amounts due under the Tender Document.”

The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, 20 or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that : “where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” There must be a clear notice invoking arbitration setting out the “particular dispute” 21 (including claims / amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

In the present case, the notice invoking

arbitration was issued 5 ½ years after rejection of the



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claims on 04.08.2014. Consequently, the notice invoking arbitration is ex facie time barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case.”

19. From the above judgment, it is very clear that Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. In the present case no notice of invocation was issued and the dispute arose on 23.06.2010 itself. The period of three years from the date of dispute No notice was issued and the claim beyond the period of three years from the date of dispute raised by the Petitioner.

20. In ***Secunderabad Cantonment Board –Vs- B.Ramachandriah& Sons [2021 Sc Online Sc 219]*** the Honourable Supreme Court has held as follows:

*“20. Applying the aforesaid judgments to the facts of this case, so far as the applicability of **Article 137** of the **Limitation Act** to the applications under **Section 11** of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the*



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letter dated 07.11.2006. This demand was reiterated by a letter dated 13.01.2007, which letter itself informed the Appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12.02.2007. The Appellant's laconic letter dated 23.01.2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12.02.2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the Respondent and time began running from that day. Obviously, once time has started running, any final rejection by the Appellant by its letter dated 10.11.2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of [Section 9](#) of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under [Section 11](#) of the Arbitration Act were filed on



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three years starting from 10.11.2020. On this count, the applications under [Section 11](#) of the Arbitration Act, themselves being hopelessly time barred, no arbitrator could have been appointed by the High Court.”

21. In ***Vijay Kumar Sharma alias Manju vs. Raghunandan Sharma alias Baburam and others [(2010) 2 SCC 486]*** the Honourable Apex Court has held that mere pendency of the Application under Section 8(1) of the Arbitration and Conciliation Act, will not come in the way of an arbitration being commenced or continued.

22. Now, without notice for invoking arbitration, the Petitioner cannot seek to appoint an arbitrator under Section 11 of the Act. The dispute arose in the year 2010 itself between the parties and the petitioner prosecuting various criminal cases and consumer cases also in this regard and the time for claiming the damages or compensation is three years from the date of dispute. In such a view of the matter, the Petition itself filed beyond the period of three years and the Petition has been filed only on 24.7.2014, which is beyond the period of three years from the date of dispute 26.03.2010, besides no notice of invocation was issued. In such a view of the matter the Petition is not maintainable and the same is liable



23. Accordingly, the Original Petition is dismissed. Admittedly, suit has been filed pending before the Senior Civil Judge, Goa, against the Petitioner. It is for the petitioner to raise all his defence by way of counter claim in the above suit.

Sd./-N.S.K.J
06.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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