

AP/354/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONRAJAT MUKLANIA
VERSUS
NATIONAL JUTE MANUFACTURES CORPORATION LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 1ST JULY, 2022APPEARANCE:
Mr. Anuj Singh, Advocate
Mr. Visal Sinha, Advocate
....for the applicant
Mr. Aritra Basu, Advocate
Mr. Partha Banerjee, Advocate
. . . for the respondent.

The Court:- This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator.

The arbitration agreement between the parties dated 29th August, 2015 in the form of jobwork contract is not in dispute. This agreement contains the following clause relating to the dispute resolution and clause 12.2 provides for resolution of dispute through the arbitration :

*“12. GOVERNING LAW AND DISPUTE RESOLUTION**12.1 Any and all claims arising directly or indirectly from the relationship between the parties (such dispute, difference or claim hereafter referred to as “Dispute”) under this arrangement shall in the first instance be resolved amicably by representatives of the Contractor and the company.**12.2 In the event such Dispute is not resolved amicably by the representatives of both the parties, then such Dispute shall be resolved by way of arbitration, to be held in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration and the seat of arbitral proceedings shall be Kolkata, India. The decision of the arbitral tribunal and any award given by the arbitral tribunal shall be final and binding upon the parties.**12.3 The arbitral tribunal shall be constituted comprising of three arbitrators, with each party appointing a nominee arbitrator and such nominee arbitrators appointing the third arbitrator within a period of 15(fifteen) days of the appointment of the last of the arbitrator. Where such third arbitrator has not been selected on account of a difference of opinion amongst the arbitrators, the third arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996.*

12.4 Notwithstanding the existence of any dispute or difference between the parties which is referred for resolution or, as the case may be to arbitration, the parties shall, during the pendency of the process of resolution or, as the case may be, arbitration, continue to act on matters under the Contract which are not the subject matter of the dispute or difference as if no such dispute or difference had arisen.”

Learned counsel for the applicant has pointed out that the contract was terminated on 16th April, 2016 and certain dues were unpaid. Therefore, the applicant had sent a letter dated 18th October, 2016 demanding the payment and thereafter by communication dated 10th January, 2018 had informed the respondent the name of his nominee arbitrator and had asked for further action at the end of the respondent in terms of the arbitration clause. Thereafter, this AP has been filed.

Learned counsel for the respondent has opposed the AP on the sole ground that the claim is ex facie barred by time. In this regard, he has placed reliance upon the judgment in the matter of *Bharat Sanchar Nigam Limited & Anr. Vs. Nortel Networks India Private Limited* reported in (2021) 5 SCC 738. He has submitted that the contract was terminated on 16th April, 2016 and the claim was made by the communication dated 18th October, 2018. Therefore, the limitation in terms of Section 113 of the Limitation Act had expired within the period of three years from the date of cause of action. Thereafter, subsequently now the prayer for appointment of arbitrator should be rejected.

Opposing the prayer of learned counsel for the respondent, counsel for the applicant submits that the claim is not barred by time as the contract was terminated on 16th April, 2016 and the applicant had invoked the arbitration clause by sending the communication dated 10th January, 2018 within three years and thereafter in terms of the order of the Supreme Court in the *Suo Motu Writ Petition (C) No.3 of 2020* dated 10th January, 2022, a period from 15th March, 2020 to 28th February, 2022 is required to be excluded and that the AP itself was filed on 20th May, 2022.

In view of the aforesaid facts, I am of the opinion that the issue of limitation which is essentially a mixed question of fact and law needs to be

decided by the Arbitrator and at this stage the claim cannot be held to be ex facie time barred by closing the remedy of arbitration.

Hence, AP is allowed. Justice Sahidullah Munshi (Mob. No. 8335073597), a retired Judge of this Court is appointed as Arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)