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Arb.O.P.(Comm.Div.) No.192 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.192 of 2022

M/s.Ram Prasad Tubers and Bars (P) Ltd.
Rep. By its Directors, Mr.J.Vidya Prakash
S/o. Mr.Jegannathan,
Registered Office at No.818/1,
Samanaickenpalayam,
No.4, Veerapandi (Po),
Coimbatore-641 019.

.. Petitioner

vs.

M/s.Faurecia Emissions Control Technologies India (P) Ltd.
Rep. By its Managing Director,
No.449A, Pondhur Village,
SHG57, Sriperumbudur Taluk,
Kancheepuram District.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, prayed to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the Petitioner and Respondent under the Tooling Agreement dated 01.06.2014.

For Petitioner : Mr.S.Senthil



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For Respondents : Mr.T.K.A.Padmanaban

ORDER

The petitioner entered into a tooling agreement on 01.06.2014 in relation to the manufacture and supply of tools to the respondent. The said agreement admittedly contains an arbitration clause. After issuing a notice dated 25.09.2021 under Section 21 of the Arbitration and Conciliation Act 1996 (the Arbitration Act), the present petition is instituted.

2. Learned counsel for the petitioner submits that a civil suit was filed (O.S.No.430 of 2017) in respect of the dispute between the petitioner and the respondent before the first Additional District Judge, Coimbatore. The respondent filed an application under Section 8 of the Arbitration Act and, by order dated 29.04.2019, the Court directed parties to resolve disputes through arbitration. Therefore, learned counsel for the petitioner contends that the petitioner is entitled to the benefit of Section 14 of the Limitation Act 1963 (the Limitation Act). If such benefit is extended, it is contended that the claims are within the period of limitation.



3. These contentions are refuted by learned counsel for the respondent. While admitting that the tooling agreement contains an arbitration clause, learned counsel for the respondent submits that the claims of the petitioner are hopelessly barred by limitation. By asserting that the cause of arbitration arose in or about 13.06.2016, learned counsel points out that the order of the Additional District Judge was issued on 29.04.2019, whereas the Section 21 notice was issued on 25.09.2021. Therefore, he contended that the facts disclose that the petitioner did not prosecute the action with due diligence or in a *bona fide* manner. In support of this contention, he relied upon the judgments of the Hon'ble Supreme Court in *Suryachakra Power Corporation Limited v. Electricity Board and Others* (2016) 16 SCC 152, particularly paragraph 9 thereof, and *Ramji Pandey & Others v. Swaran Kali* (2010) 14 SCC 492, particularly paragraph 17 thereof. With reference to the judgment in *Bharat Sanchar Nigam Limited (BSNL) & Anr. v. Nortel Networks India Pvt. Ltd.* (2021) 5 SCC 738, he submitted that the Section 21 notice should be received within three years from the cause for arbitration. If not, the claim is time barred. If computed from 13.06.2016, the Section 21 notice dated 25.09.2021 is time-barred.



4. At the outset, it should be recognized that limitation is a mixed question of fact and law unless the question of limitation can be decided as a pure question of law on the basis of facts admitted by the contesting parties. This case cannot be characterized as one in which there is consensus between the parties on the facts constituting the cause of action. In **BSNL**, the Hon'ble Supreme Court recognized the distinction between the limitation period for filing a petition under Section 11 of the Arbitration Act and the limitation period for presenting claims before the arbitral tribunal. In paragraph 40 of the judgment, the Hon'ble Supreme Court analyzed the distinction between issues relating to jurisdiction and admissibility and concluded that the issue of limitation pertains to admissibility of the claims and not to the jurisdiction of the arbitral tribunal. Therefore, it was decided that the issue of limitation should ordinarily be decided by the arbitral tribunal. Thereafter, in paragraph 47, the Hon'ble Supreme carved out a limited exception to this rule. Paragraph 47 reads as under:

“47. It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may



decline to make the reference. However, if otherwise it would encroach upon what is essentially a matter to be determined by the tribunal.”

5. Thus, as per the law laid down by the Hon'ble Supreme Court, a request for reference to arbitration should be declined on the ground of limitation only if the claim is *ex facie* time-barred and the Court is in no doubt at all that the claim is barred by limitation. Applying this principle to the facts of this case, the petitioner filed a suit on or about 31.07.2017 and the said suit was rejected on account of the arbitration clause on 29.04.2019. Therefore, the question arises as to whether the petitioner is entitled to the benefit of Section 14 of the Limitation Act. This question should be decided by the arbitral tribunal and not by this Court in exercise of jurisdiction under Section 11. Therefore, all the judgments cited by learned counsel for the respondent on this issue would be relevant when the arbitral tribunal decides the issue of limitation, whether as a preliminary issue or otherwise. From the limited facts on record, it is not possible to conclude that the claims are *ex facie* time-barred. Therefore, the benefit of



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doubt should be extended to the petitioner by leaving it open to the arbitral tribunal to decide the issue of limitation in an appropriate manner.

6. Subject to the above observations, Arb.O.P.(Com. Div.) No.192 of 2022 is allowed by appointing Mr.T.Mohandas, a retired District Judge, New No.5, Old No.3, Solaiamman Koil Street, Purasaiwalkam, Chennai-600 007 (Mobile Number:9443193382) appointed as the sole Arbitrator. The sole Arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings may be decided in consultation with the parties

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Index : Yes / No

Internet : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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