

212

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ARB No.137 of 2017(O&M)
Date of Decision:14.11.2022**

M/s Raj Kishan and Company

.....Petitioner

Vs

Haryana Power Generation Corporation Limited and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Nikhil Handu, Advocate and
Mr. D.K. Singal, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate and
Mr. Jaskirat Singh, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of agreement dated 14.10.1991.

The construction work was allocated to the petitioner on the date of execution of agreement in question. The period of

work of construction was for 18 months. The petitioner completed the work assignment on 31.03.2001 with some delay and extension thereof.

According to the respondents, final payment was released to the petitioner on 12.10.2001. In para No.6 of the petition, the petitioner has claimed that final bill for work was submitted by the petitioner on 07.01.2003 for a gross amount of Rs.2,61,05,604.81, which was never certified by the respondents despite repeated reminders vide letter dated 13.12.2013 and 23.01.2015 as Annexures P-5 and P-6 respectively.

Perusal of the aforesaid Annexures P-5 and P-6 would show that the work was completed on 31.03.2001 and final bills were presented by the petitioner on 24.09.2002. The respondents have denied the very execution of these documents with reference to alleged date of submission of final bill by the petitioner either on 24.09.2002 or on 07.01.2003. Notice of invocation of arbitration clause was done for the first time on 22.04.2015.

Learned counsel for the petitioner submits that in the very nature of work executed by the petitioner, non-invocation of arbitration clause till submission of final bill was justified. Since final bill was never proved by the respondents, therefore,

invocation of arbitration clause on 22.04.2015, cannot be held to be *ex facie* time barred.

In the reply filed by the respondents, date of submission of final bill on 24.09.2003 with reference to Annexures P-5 and P-6 is denied altogether. In reply to para No.6 of the petition, the respondents have also denied the very execution of preparation of final bill on 07.01.2003, rather their stand is that for the work done on 31.03.2001, payments were released to the petitioner on 12.10.2001 and thereafter, the petitioner was fully satisfied and did not make any objection with regard to the alleged non-payment of its dues. For the first time, the petitioner invoked the arbitration clause on 22.04.2015 and the claim set up by the petitioner is proved to be *ex facie* time barred.

Learned counsel for the respondents made reference to **M/s Geo Miller and Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd., 2020 (14) SCC 643** and contends that mere correspondence of litigation by way of writing letters/reminders will not extend the period of limitation in any manner. In the instant case, the alleged issuance of documents viz. Annexures P-5 and P-6 is denied altogether. Even there is no correspondence between the parties since 12.10.2001. As per pleadings set up by the petitioner, the correspondence

allegedly made by the petitioner was on 30.12.2013 i.e. after the alleged preparation of final bill.

The Hon'ble Apex Court in **BSNL Vs Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738** has held that the Court must undertake a primary first review to weed out manifestly *ex facie* non-existence and invalid arbitration agreement or non-arbitrable disputes. The *prima facie* review at such a stage is to cut the deadwood, where dismissal is bare faced and pellucid, and when on the facts and law, the litigation must stop at the first stage. The Hon'ble Apex Court in **Secunderabad Cantonment Board Vs. M/s B. Ramachandraiah and Sons, 2021 (5) SCC 705** has also commented upon the issue of limitation. The petitioner was not supposed to wait till such time i.e. date on which arbitration clause was invoked on 22.04.2015 in respect of alleged cause of action which accrued in favour of the petitioner either on 12.10.2001 or 07.01.2003. It does not lie to the mouth of the petitioner to plead that the petitioner waited for unreasonably long period of time to refer the dispute to arbitration merely on account of respondents failure to settle the claim in not furnishing any final bill.

Evidently, the petitioner has shown that for the first time after 12.10.2001 or 07.01.2003, the petitioner did correspondence only on 30.12.2013 and 23.01.2015 i.e.

Annexures P-5 and P-6. In both the aforesaid documents, the date of final bill is pleaded to be 24.09.2002. Even from the pleadings of the petition, the date of alleged preparation of final bill is on contrary note.

For the reasons recorded hereinabove, I am of the view that the claim of the petitioner is *ex facie* time barred on the basis of ratio laid down in **BSNL's case (supra)** and **Securderabad Cantonment Board's case (supra)**.

In view of above, the present petition stands dismissed.

14.11.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No