

ORDER SHEET
AP/374/2020

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

M/S. HINDUSTHAN BUILDERS
Versus
IRCON INTERNATIONAL LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 27th July, 2023.

Appearance:
Mr. Souvik Nandy, Adv.
Mr. Somnath Saha, Adv.

Mr. R. N. Ghose, Adv.
Ms. S. Santra, Adv.

The Court: This is an application for appointment of an Arbitrator. An agreement was executed between the petitioner and the respondent on 14th March, 2016 for execution of a work contract. This agreement contains an arbitration clause at Clause 45.2, 45.3(A)(i), 45.11.

The dispute is on a claim made by the petitioner on the respondent for damages on account of alleged breach of the terms and conditions of the contract. The dispute also appears from the stand of the respondent who says, through its advocate-on-record, that the petitioner was not entitled to make any claims after receiving full and final payment of the work done of about Rs.48.23 lakhs in March, 2019. The respondent also says that the petitioner signed a no-claim certificate after receiving full and final payment without any objection raised including of duress or undue influence. It is further submitted that the claims are barred by limitation and would hence fall within the

decision of the Supreme Court in *Bharat Sanchar Nigam Ltd. & Ors. vs. Nortel Networks India Private Limited* reported in (2021)5 SCC 738.

Learned counsel appearing for the petitioner submits, on the other hand, that the petitioner is entitled to additional payment amounting to approximately Rs.65 lakhs on account of the breach of the respondent. The claim is essentially in the nature of damages.

The point of limitation which has been taken on behalf of the respondent is not clear since no particular Article in the Schedule to the Limitation Act has been relied on. Even if this Court were to take Article 55 which contemplates compensation for breach of any contract, the limitation is of three years from the date on which the contract is broken. Article 113 also provides for three years limitation in a suit for which no period of limitation is provided for. The starting point would be when the right to sue accrues. The material on record shows that the contract is of 2016 and the petitioner signed the no-claim certificate in January, 2019. The petitioner raised its first demand in September, 2019 followed by other letters including of 1st October, 2020.

The petitioner invoked the arbitration clause by a notice dated 1st October, 2020. The respondent replied to this notice on 27th October, 2020 disputing the demand without denying or disputing the arbitration clause.

The only defence taken is that the payment terms were fully settled by the final bill on 5th March, 2019. The letters on record particularly from the respondent on 27th October, 2020 together with the correspondence between the parties, in the interregnum, would show that the petitioner is well within the limitation period. Hence, the question of alleged limitation in the

substantive claims made by the petitioner would be within the domain of the Arbitrator to decide.

This Court relies on the decision of the Supreme Court in *Bharat Sanchar Nigam Ltd. & Ors. vs. Nortel Networks India Private Limited* reported in (2021)5 SCC 738, which held that only in rare and exceptional cases, the Court may refuse to make the reference where the Court finds that the claims are *ex facie* time-barred or that there is no subsisting dispute to be referred to arbitration. The Supreme Court also held that this would be in a very limited category of cases and if there is any doubt as to whether the claim is time-barred or that the dispute is non-arbitrable, the Court should refer the disputes to arbitration.

The respective contentions of the parties itself raise a doubt as to the limitation and the alleged delay in the claims of the petitioner. What is without doubt is that there is a dispute and there is an arbitration agreement.

Hence, the parties would fall under Section 11(6)(a) of the 1996 Act.

AP/374/2020 is accordingly allowed and disposed of by appointing Mr. Rishad Medora, Advocate, to act as the Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his consent in the prescribed format under the 1996 Act read with the Schedules to the Registrar, Original Side within three weeks from date. The advocate-on-record of the petitioner will communicate this order on the Arbitrator by 29th July, 2023 with the details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)