

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP/649/2023

RAHUL ENTERPRISES
VS
NATIONAL JUTE MANUFACTURES CORPORATION LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 19th September, 2023.

Appearance:

Ms. Sristi Barman Roy, Adv.

Mr. K. K. Chattopadhyay, Adv.

...for the petitioner

Mr. Rahul Karmakar, Adv.

Mr. Surya Prasad Chattopadhyay, Adv.

Mr. Arjun Samanta, Adv.

Mr. Sourav Guchhait, Adv.

...for the respondent

The Court:- This is an application for appointment of an Arbitrator under Section 11 of the 1996 Act. The dispute relates to a "Jobwork Contract" dated 27th October, 2014 between the respondent and the petitioner. By the said contract, the petitioner (described as the contractor) was to manufacture jute products at one of the factories of the respondent. The contract contains an arbitration provision under Clause 12.

The dispute as also the grievance of the petitioner is that the respondent terminated the contract on 16th January, 2016 but thereafter paid some amount of the petitioner's dues on account of the job done by the petitioner in

terms of the contract. The petitioner now claims approximately Rs.5.47 crores on account of its unpaid dues. The petitioner also invoked the provisions of The Insolvency and Bankruptcy Code, 2016 against the respondent in 2019 which was, however, subsequently dismissed for default. The petitioner thereafter invoked the arbitration clause by a Notice under Section 21 of the 1996 Act on 5th August, 2023. The respondent replied to the Notice by an undated letter raising counter-claims against the petitioner.

The dispute between the parties, hence, relates to the unpaid dues of the petitioner which is found to be relatable to the arbitration Agreement dated 27th October, 2014.

Although the Court is inclined to allow the application for appointment of Arbitrator, the preliminary objection raised on behalf of the respondent must also be answered.

Learned counsel appearing for the respondent submits that the petitioner's claims are barred under the laws of limitation since the contract is of 2014, the cause of action arose in 2016 and the invocation of the arbitration Agreement is dated 5th August, 2023.

The correspondence exchanged between the parties, as pointed by learned counsel appearing for the petitioner, fits into the "breaking point" decision of the Supreme Court in *Geo Miller & Co. (P) Ltd. vs. Chairman, Rajasthan Vidyut Utpadan Nigam Limited* (2020) 14 SCC 643 where the Court held in paragraphs 28 and 29 of the Report that it is important for the Court to find out whether a reasonable party would have abandoned efforts of arriving

at a settlement and contemplated referral of the dispute to arbitration. This was also taken note of in the recent Supreme Court decision in *B and T AG vs. Ministry of Defence 2023 SCC OnLine SC 657*. The later decision, however, frowned on continuing correspondence seeking to beat limitation. The facts in *B and T AG* were different and there was a delay of over three years in that case.

The sequence of events in the present case indicates that although the contract was terminated on 16th January, 2016, the petitioner wrote several times to the respondent for release of its dues and also initiated corporate insolvency resolution process against the respondent, albeit unsuccessfully. The respondent also wrote several letters to the petitioner on 4th October, 2018 and 27th November, 2018 besides making payments to the petitioner in May-June, 2023 and also responded to the petitioner's notice invoking the arbitration clause. The petitioner is also saved by the orders of the Supreme Court which lasted till 28th February, 2022 extending all periods of limitation under the special and general laws by reason of the pandemic.

The chain of correspondence shows that the parties remained in contact, responded to each other and all efforts at amicable resolution of the dispute failed after considerable efforts on the part of the petitioner. The relevant dates hence cannot be ignored.

The question of limitation is hence answered in favour of the petitioner.

The Court must also rely on the decision in *Bharat Sanchar Nigam Limited vs. Nortel Networks India Pvt. Ltd. (2021) 5 SCC 738* where the Supreme

Court was also of the view that the referral Court must come to a clear finding on the claims being ex facie barred by limitation in refusing to allow an application under Section 11 of the Act. The limitation point has already been answered in favour of the petitioner in the present case.

AP/649/2023 is accordingly allowed and disposed of by appointing Mr. Chittatosh Mookerjee, former Chief Justice of the Bombay High Court to act as the Arbitrator subject to the learned Arbitrator communicating his/her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 22nd September, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

Kc/sg.