

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

Date of decision: 8th February, 2023

(1) Arbitration Case No. 155 of 2021

M/s Bansal Builders		Petitioner
	Versus	
State of Haryana and others		Respondents

(2) Arbitration Case No. 156 of 2021

M/s Bansal Builders		Petitioner
	Versus	
State of Haryana and others		Respondents

(3) Arbitration Case No. 157 of 2021

M/s Bansal Builders		Petitioner
	Versus	
State of Haryana and others		Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Rana, Advocate for the petitioner(s).
Mr. Sharad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of above-mentioned three petitions, as the issue is common and similar relief is sought.

2. For the sake of convenience, facts are being taken from Arbitration Case No. 155 of 2021.

3. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

4. The brief facts are that the petitioner was allotted a tender for widening and strengthening Kala-Amb Road, NH-72. The work was allotted in August, 2006. There was delay in completion of the work. Penalty of Rs.35,15,000/- was imposed in the year 2007 on the petitioner. The petitioner challenged the penalty, which was reduced to Rs. 1,00,000/- on 31.3.2012. The final payment of the work done was made by the respondent to the petitioner on 31.3.2012 and part of the penalty amount was also waived.

5. Reliance of learned counsel for the petitioner is on Clause 25A of the agreement for referring the matter to the arbitrator. From the perusal of Clause 25A, it is forthcoming that it provided for pre-arbitration settlement. The petition filed under Section 11 of the Act (Arbitration Case No. 102 of 2019) was withdrawn on 17.5.2019. The order is quoted below:

“On being confronted with the observation that since the remedy of resolution of dispute by referring the same to the Executive Engineer-in-charge of the work at the time in the first instance has not been exhausted, this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is premature, learned counsel for the applicant sought leave of the court to permit withdrawal of the application with

liberty to exhaust the said remedy.

Prayer made is allowed.

Application accordingly stands dismissed as withdrawn with liberty prayed for.”

6. The petitioner vide letter dated 20.11.2019 raised a claim before the Executive Engineer, the same was rejected on 28.1.2020. Thereafter notice dated 24.2.2020 was served for appointment of arbitrator, as needful was not done, hence the present petition.

7. Learned counsel for the respondent submits that the claim is time barred, the cause of action arose to the petitioner in 2008 and for eleven years, the petitioner had not filed a claim before the Executive Engineer-in-charge of the work.

8. Learned counsel for the petitioner submits that challenge to the penalty imposed was finally decided on 31.3.2012, the final payment was made on the same day and thereafter vide letter dated 24.9.2014, a request was made for appointment of the arbitrator.

9. The petition filed under Section 11 of the Act for appointment of Arbitrator in 2019 was dismissed as pre-mature as the petitioner had not exhausted the remedy of resolution of dispute by approaching the Executive Engineer-in-charge of the work.

10. Taking the case of the petitioner at the highest, the cause of action arose to it on 31.3.2012. The mechanism for pre-arbitral dispute resolution by referring to the Executive Engineer-in-charge of the work was availed on 20.11.2019 i.e. after more than seven years.

11. The Supreme Court in ***Intercontinental Hotels Group (India)***

Pvt. Ltd. and another v. Waterline Hotels Pvt. Ltd., 2022(7) SCC 662

held:

*“8. At the outset, we need to state that this Court’s jurisdiction to adjudicate issues at the preappointment stage has been the subject matter of numerous cases before this Court as well as High Courts. The initial interpretation provided by this Court to examine issues extensively, was recognized as being against the pro arbitration stance envisaged by the 1996 Act. Case by case, Courts restricted themselves in occupying the space provided for the arbitrators, in line with party autonomy that has been reiterated by this Court in **Vidya Drolia v. Durga Trading Corporation** , (2021) 2 SCC 1, which clearly expounds that Courts had very limited jurisdiction under [Section 11\(6\)](#) of the Act. Courts are to take a ‘prima facie’ view, as explained therein, on issues relating to existence of the arbitration agreement. Usually, issues of arbitrability/validity are matters to be adjudicated upon by arbitrators. The only narrow exception carved out was that Courts could adjudicate to ‘cut the deadwood’. Ultimately the Court held that the watch word for the Courts is ‘when in doubt, do refer’.”*

12. By filing the present petition, there is an attempt to revive a time barred claim by seeking appointment of the arbitrator. Clause 25A provided for pre-arbitration dispute resolution. There is no material on record to show that prior to 20.11.2019, the remedy for pre-arbitration

resolution was availed. The claim is hopelessly time barred.

13. The petitions are dismissed.

14. Since the main cases have been disposed of, pending applications, if any, stand disposed of.

15. Photocopy of the order be placed on the file of connected case.

[AVNEESH JHINGAN]
JUDGE

8th February, 2023.
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |