

OCD 21

ORDER SHEET
AP-COM/721/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S N C CONSTRUCTION
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 12th August, 2024.

Appearance:
Mr. Anupam Acharya, Adv.
Ms. Alivia Bhattacharjee, Adv.
...for the petitioner

Mr. Kumar Jyoti Tiwari, Adv.
Ms. Tanusree Ghosh, Adv.
...for Union of India

Mr. Raj Sekhar Basu, Adv.
...for the respondent no.4

The Court: Learned counsel for the petitioner argues that the petitioner did work for the respondents. Out of the four bills raised, two were paid duly by the respondents/BSNL. However, for the remaining two bills, payments were withheld all along, thereby necessitating the present application under Section 11 under the Arbitration and Conciliation Act, 1996. It is submitted that the petitioner has already invoked the arbitration clause in the agreement between the parties and after waiting for thirty days, due to lack concurrence regarding

appointment of Arbitrator, has been compelled to take out the instant application.

Learned counsel appearing for the respondents contends that the subject dispute, for which reference to arbitration has been sought, is itself palpably barred by limitation.

It is pointed out from the annexures to the present application that the initial claims were made by the petitioner as long back as in the year 2011.

Upon a perusal of the documents annexed, it transpires that a specific claim in the present regard was made on December 29, 2011. Thereafter, the same was reiterated on May 14, 2012. The claim has been periodically reiterated, in 2013, 2017 etc.

In reply, learned counsel for the petitioner has sought to impress upon the Court that there was no refusal by the respondents to pay up at any point of time and, as such, it would be premature for the petitioner previously to file the claim. Learned counsel for the petitioner places reliance on the judgment of the Supreme Court in the case of *M/s. Arif Azim Co. Ltd. vs. M/s. Aptech Ltd.* on 1 March, 2024. The Supreme Court, in paragraph 87 thereof, while relying on a previous judgment, observed that the period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, or mere settlement discussions, *where a final bill is rejected* by making deductions or otherwise. It is submitted that, thus, the cause of action did not ripen in the instant case since the final bill was never rejected.

However, such contention of the petitioner cannot be accepted as, on the face of the documents annexed to the application itself, it is seen that petitioner first made its demand in the year 2011, that is, long 13 years back.

The commencement of the limitation for a money claim cannot be said to start from the specific date of refusal but is the date when the money becomes due. In the present case, the money claimed by the petitioner became due to the petitioner, even as per the allegations of the petitioner, at least prior to December, 2011 when the claim was first made.

Thus, the absence of any clear document to show refusal by the respondents is immaterial. Rather, it is the other way round; the petitioner had to produce at least a single communication from the end of the respondents to indicate that the criteria of Section 18 of the Limitation Act were satisfied. There being no averment in that regard either in the petition or in the demand or notice under Section 21 of the Arbitration and Conciliation Act, 1996, this Court is of the opinion that this is a case where the claim of the petitioner is a proverbial “dead wood”. Thus, such claim, which is *ex facie* stale and long barred by limitation (which deduction can be made even without appreciation of any evidence, on the materials annexed by the petitioner itself), should be nipped in the bud.

Accordingly, AP-COM/721/2024 is dismissed on contest without any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)