



ARB-277-2023

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

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ARB-277-2023

Date of Decision: 14.10.2024

M/s Paving Stone India Private Limited

...Applicant

Versus

Haryana State Warehousing Corporation and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Nimish Gautam, Advocate for the applicant
Mr. Prateek Mahajan, Advocate and
Ms. Perna Malhotra, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

2. The applicant and respondent entered into an agreement dated 06.09.2005 for supply of heavy-duty CC pavement M-50 in parking and bonded area at ICD, Rewari. The respondent made final payment on 25.11.2011 which was accepted by the applicant without demur. The respondent released compensation levied under Clause II of the agreement vide Cheque dated 24.04.2012. The applicant served notice under Section 21 of the 1996 Act on 31.05.2023.



3. The applicant was allotted contract in 2005 and it was to be executed within 90 days. The applicant partially completed contract in 2011. The respondent as per its calculation made full and final payment in 2011. The contract awarded in favour of the applicant was cancelled and allotted to another contractor namely M/s R.N. Tiles Private Limited. The contract to M/s R.N. Tiles Private Limited was allotted at the risk and cost of the applicant.

4. Learned counsel for the respondent, at the outset, submits that final bill was released in 2011. The demand notice came to be served on 31.05.2023. The application filed before this Court under Section 11(6) of 1996 is hopelessly barred by limitation. The applicant is trying to rekindle a dead claim.

5. *Per contra*, learned counsel for the applicant submits that in reply dated 26.03.2015 to the application filed under Right to Information Act, 2005 (for short '**2005 Act**'), the respondent had intimated that claim of the applicant would be settled after finalization of bill of M/s R.N. Tiles Private Limited to whom the contract was subsequently allotted. The bill of said contractor was finally settled in 2023, thus, cause of action accrued in 2023.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. A Seven-Judge Bench of Supreme Court in ***SBP & Co. v. Patel Engg. Ltd. (2005) 8 SCC 618*** has held that the issue of limitation being one of threshold importance, must be decided at the pre-reference stage so that the



other party is not dragged through a long-drawn arbitration which would be expensive and time consuming.

8. Having held that Article 137 of Limitation Act is applicable to proceedings under Section 11(6) of 1996 Act, the Supreme Court in ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313***; ***BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738*** and ***B&T AG v. Union of India, (2024) 5 SCC 358*** has held that though limitation is an admissibility issue, yet it is duty of the Courts to prime facie examine and reject non-arbitrable or dead claims so as to protect the other party from being drawn into a time consuming and costly arbitration process. While considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a two-pronged test-first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of dispute to arbitration, the Court may refuse to appoint an Arbitral Tribunal. There are three principles of law regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It is important to find out the “breaking point” at which any reasonable party would have abandoned the



efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced. A notice invoking arbitration after six years from the cause of action is barred by limitation. The claim after six years is ex-facie dead and time barred. The period of limitation for issuing notice of arbitration would not extend by mere exchange of letters or settlement discussions where a final bill is rejected by making deductions or otherwise.

9. From the record it is evident that as per communication dated 21.08.2013, the applicant was not released its machinery on account of pending court cases. As per communication dated 26.03.2015, the applicant could not establish its ownership over the alleged machinery. The respondent in reply to an application under 2005 Act had informed that claim of applicant would be finalized after finalization of bill of subsequent contractor i.e. M/s R.N. Tiles Private Limited. The applicant did not take any action after 26.03.2015 and served notice under Section 21 of 1996 Act on 31.05.2023. The contract of applicant was cancelled in 2011 and final payment as per calculation of respondent was made to the applicant. Cause of action arose in 2011 and at the most could be enlarged to 2015 whereas notice invoking arbitration clause was issued on 31.05.2023. In view of afore-cited judgments of the Supreme Court, this Court finds that demand notice was served in 2023 with respect to a claim which on the said date was hopelessly barred by limitation and had become dead wood.



10. In the backdrop, this Court is of the considered opinion that present application deserves to be dismissed and accordingly dismissed.

11. Pending application(s), if any, shall also stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.10.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No