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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 512/2023**

SAHAMAL SINGH

.....Petitioner

Through: Mr. Vikas Sethi, Advocate

versus

CONTAINER CORPORATION OF INDIA LIMITED.....Respondent

Through: Mr. Arun Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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09.04.2025

I.A. 8743/2025

1. This application is filed on behalf of the Petitioner under Section 151 of CPC, 1908 read with Section 5 of Limitation Act, 1963 seeking condonation of delay of 103 days in filing review petition.
2. Issue notice.
3. Mr. Arun Kumar, learned counsel accepts notice on behalf of the Respondent.
4. For the reasons stated in the application, the same is allowed. Delay of 103 days in filing the review petition stands condoned.
5. Application stands disposed of.

REVIEW PET. 196/2025

6. This review petition is filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Sections 114 and 151 of CPC, 1908 seeking review of judgment dated 09.05.2024 passed by this Court with a further direction to the learned Arbitrator to decide the issue of limitation.



7. Issue notice.
8. Mr. Arun Kumar, learned counsel accepts notice on behalf of the Respondent.
9. Learned counsel for the Respondent submits that there is no merit in the review and the same deserves to be dismissed as Petitioner is unable to point out an error apparent on the face of the judgment. It is argued that the Court while deciding the petition under Section 11(6) of Arbitration and Conciliation Act, 1996 took note of the preliminary objection that the petition was barred by time as the cause of action, if any, in favour of the Petitioner first arose on 29.03.2016 and lastly arose on 13.07.2016 and relying on the judgment of the Supreme Court in ***B and T AG v. Ministry of Defence, 2023 SCC OnLine SC 657***, held that the deductions allegedly erroneously made by the Respondent from the bills of the Petitioner were made in 2016 and no claim could be raised after three years in 2023 by virtue of Article 137 of the Limitation Act, 1963, however, claims as referred to paragraph 10 in the notice under Section 21 of the 1996 Act were referred for arbitration. No error can be found with this observation.
10. Counsel for the Petitioner urges that there is an error apparent on the face of the judgment dated 09.05.2024 as there is no clarity as to which issue is to be decided by the learned Arbitrator. In any case, limitation is a mixed question of fact and law and is within the competence of the learned Arbitrator to adjudicate and Court should not have given a finding that some of the claims were stale and time barred. Besides, Section 19 of the Limitation Act, provides that a fresh period of limitation will start when part payment of the debt is made by the other party and since in the present case,



last payment was received by the Petitioner on 22.09.2021, claims relating to the period 2016 and before were not time barred.

11. Heard.

12. It is a settled law that scope of jurisdiction in a review petition is limited and party seeking review must be able to establish an error apparent on the face of the record. In ***T.C. Basappa v. T. Nagappa, (1955) 1 SCR 250***, the Supreme Court held that ‘an error apparent on the face of the proceedings’ is an error, which is based on clear ignorance or disregard of the provisions of law i.e. an error which is a patent error and not a mere wrong decision. This position was further reiterated and re-affirmed in ***Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104***, where the Supreme Court held that to seek review there should be something more than a mere error, it must be one which is manifest on the face of the record and no error could be an error apparent on the face of the record, if it is not self-evident and requires examination or argument to establish it.

13. A reading of the judgment dated 09.05.2024 shows that the Court had categorized the claims of the Petitioner into two parts. In relation to claims where cause of action arose in 2016, Court came to a conclusion that they were stale claims and could not be agitated in 2023 and declined to refer the same for arbitration. For coming to this conclusion, Court relied on the judgment of the Supreme Court in ***B and T AG (supra)***. Relevant paragraphs from the judgment under review are as follows:-

“22. However, there cannot be any doubt to the settled preposition as has been reiterated by the Apex Court in M/s B and T AG v. Ministry of Defence 2023 SCC OnLine SC 657 that a stale claim cannot be allowed to be raised by way of arbitration. In M/s B and T AG (Supra), the Apex Court has inter alia held as under:

“31. Since a petition under Section 11(6) of the Act 1996 for seeking appointment of Arbitral Tribunal is required to be filed before the



High Court or the Supreme Court, as the case may be, Article 137 of the Schedule to the Act 1963 would apply.

32. Article 137 reads thus:

<i>“Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from when period begins to run when the right to apply accrues”</i>
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<i>137. Any other application for which no period of limitation is provided elsewhere in this Division.</i>	<i>Three years.</i>	
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33. A plain reading of the aforesaid Article would indicate that the period of limitation in cases covered by Article 137 is three years and the said period would begin to run when the right to apply accrues.

34. The starting point of limitation under Article 137 according to third column of the Article is the date when 'the right to apply arises'. This being a residuary Article to be adopted to different classes of applications, the expression 'the right to apply' is an expression of a broad common law principle and should be interpreted according to the circumstances of each case. 'The right to apply' has been interpreted to mean 'the right to apply first arises'. (See: Meria Ramanna v. Nallaparaju, (1955) 2 SCR 938)

35. Further, it would be necessary to refer to Section 9 of the Act 1963 of the Act which reads thus:

"9. Continuous running of time. Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues." (Emphasis supplied)"

23. The Apex court thereafter taking into account all the precedents inter alia held as under:

“65. On a conspectus of all the aforesaid decisions what is discernible is that there is a fine distinction between the plea that the claims raised are barred by limitation and the plea that the application for appointment of an arbitrator is barred by limitation.



66. *Mookerjee, J. in Dwijendra Narain Roy v. Joges Chandra De*, reported in AIR 1924 Cal 600 has explained the true test to determine when a cause of action could be said to have accrued observing as under:

“10.... The substance of the matter is that time runs when the cause of action accrues and a cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed; Coburn v. Colledge [(1897) 1 Q.B. 702]; Gelmani v. Morriggia [(1913) 2 K.B. 549]. The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief: Whalley v. Whalley [(1816) 1 M.R. 436]. The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result.....”

(Emphasis supplied)

67. *"Cause of action" means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. In delivering the judgment of the Board in Mussummat Chand Kour v. Partab Singh, reported in ILR (1889) 16 Cal 98, Lord Watson observed:*

“Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff it refers entirely to the grounds set forth in the plaint as the cause of action, or in other words to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.”

(Emphasis supplied)

68. *Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the Act 1996 because they are unclear of when the cause of action arose, the claim can become timebarred even before the party realises the same.*

69. *Russell on Arbitration by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of*



action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

“Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.”

70. Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

71. In Law of Arbitration by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the Act 1963, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the Act 1996 is governed by Article 137 of the Schedule to the Act 1963 and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

72. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to, the substance, rather than the form of the action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the Act 1996 for establishment of his right which was not then alive, and, which had



been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the Act 1963 and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the Act 1963.”

24. There cannot be any doubt to the preposition that the stale claim cannot be allowed to be raised by the petitioner by invoking the arbitration. The Apex Court has unambiguously enter as held that the claim as raised was hopelessly barred claim as the petitioner vide its conduct left its right unclaimed for more than five years.

25. Admittedly, the deductions which were allegedly made by the respondent in 2016 have become time barred and cannot be raised in the present arbitration. Thus this claim of the petitioner cannot be referred to the arbitration, in respect of the deductions. In view of the settled law as being laid by the Apex Court in M/s B and T AG (Supra).”

14. However, the remaining claims referred to in paragraph 10 of the notice invoking arbitration sent by the Petitioner were referred for arbitration. This Court finds no error apparent in the judgment to this extent. There is also no merit in the contention of the Petitioner that there is no clarity on what the Arbitrator is to decide. Reading of paragraphs referred to above with paragraphs 25 to 28 clearly reflects that all claims, save and except, which were held to be stale and time barred, were referred for arbitration and it was made clear that all rights and contentions of the parties including arbitrability of any claim, any preliminary objection as well as merits of the claims were left open for adjudication by the learned Arbitrator.

15. This Court finds no ground to review the judgment dated 09.05.2024 and the same is accordingly dismissed.

JYOTI SINGH, J

APRIL 9, 2025/S.Sharma