



2024:DHC:4128



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 13th May, 2024**
+ **ARB.P. 628/2024**

ZAMIL STEEL BUILDINGS INDIA PVT. LTD. Petitioner
Through: Mr. Mrinal Beri, Advocate.

versus

CINDA ENGINEERING & CONSTRUCTION PRIVATE LIMITED
..... Respondent
Through: Mr. Gauhar Mirza, Ms. Sukanya
Singh & Ms. Nitika More, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 10832/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner, seeking appointment of a Sole Arbitrator for adjudication of the disputes having arisen between the parties.
4. It is submitted in the Petition that the Petitioner-Company incorporated under the Companies Act, 1956 is engaged in the business of production and supply of high-end pre-engineered and structural steel



buildings to various customers all over India and enjoys immense goodwill and reputation throughout the country.

5. The respondent-Company, which is an affiliate of CTCI (a Taiwanese Company), issued the Letter of Intent dated 26.11.2019 for an amount of Rs. 32,67,00,00,000/- to the petitioner, for Supply of Steel Structure & Fabrication for CCET Carbon Black Project, Project Site at Dahej, Gujarat, which was inclusive of supply, packing, transit insurance and transportation, the GST was extra as per actual.

6. Subsequent thereto, the respondent issued the Purchase Order No. 18P3630B-M0018 dated 09.12.2019, for the project works, which was accepted by the petitioner and thereafter, disputes arose *inter se* the parties under the said Purchase Order, for various reasons.

7. On 26.03.2021, the respondent unilaterally and illegally terminated the Purchase Order, issued to the petitioner, on evasive grounds merely to evade the payment of genuinely payable outstanding amounts to the petitioner. The respondent through the said Termination Notice even threatened the petitioner with the remedial actions as deemed fit by the respondent, would be taken by the respondent.

8. The petitioner has asserted that the respondent is, in fact, liable to pay the amount of Rs.3,23,68,206/- to the petitioner, as has been detailed in the petition. However, the respondent has failed to perform its obligations under the Project Order.

9. In April, 2021, the petitioner filed two Petitions under Section 9 of the Act, 1996 for interim relief in respect of ABG and the CPBG before the Saket District Court, Delhi which were registered *vide* OMP(I)(COMM) Nos. 1168-1169/2021. The said Petitions were disposed of, after which the



respondent illegally encashed the ABG and CPBG.

10. The respondent, thereafter, approached the petitioner for amicable resolution of dispute and various meetings, negotiations and discussions took place between the parties between 2022 and 2023, but no final settlement could be arrived at between the parties.

11. Clause G (Settlement of Disputes & Governing Law) of the Special Terms and Conditions of the Purchase Order dated 09.12.2019, provides for resolution of disputes through arbitration. Hence, the Statutory Notice dated 17.09.2021 under Section 21 of the Act, 1996, had been issued for invocation of arbitration.

12. The respondent *vide* its Reply dated 15.10.2021 denied and disputed its liabilities to pay any amount.

13. The petitioner *vide* its Rejoinder dated 08.11.2021, reaffirmed its claims under the Project Order.

14. It is submitted that since the respondent has failed to appoint the Arbitrator, the present petition has been filed on behalf of the petitioner for appointment of an Arbitrator.

15. Learned counsel on behalf of the respondent, has argued that the claims of the petitioner, are hopelessly barred by time.

16. Learned counsel for the respondent further submits that by way of present petition, the petitioner is trying to agitate the dead claims, since as per its own submissions, the dispute has arisen way back in 2020, and the first Notice of Invocation of Arbitration was sent on 17.09.2021 and the present petition has been filed on 17.09.2024.

17. It is also submitted on behalf of the respondent that between the period of invocation of arbitration and the filing of present petition, two



Petitions under Section 9 of the Act, 1996, were also filed on behalf of the petitioner which had been dismissed. Hence, the claims of the petitioner are hopelessly barred by limitation.

18. Learned counsel for the respondent has placed reliance on the decision in Arif Azim Co. Ltd. vs. Aptech Ltd., 2024 SCC OnLine SC 215.

19. The petitioner in its Rejoinder has submitted that the amounts have been credited in the account of the petitioner on 15.12.2022 and therefore, the present Petition is well within the limitation period.

20. **Submissions heard.**

21. The first objection has been taken on behalf of the respondent is that the present Petition is highly belated and is barred by time. However, it is not in dispute that the Purchase Order was terminated by the respondent, on 26.03.2021 and the Notice of invocation under Section 21, has been issued on 17.09.2021. The present Petition under Section 11(5) of the Act, 1996, has been filed on 03.05.2024, which is within a period of three years from the date of Notice of invocation.

22. It is admitted that the disputes arose in March, 2021, when the respondent unilaterally and illegally terminated the Purchase Order. The statutory notice dated 17.09.2021 under Section 21 of the Act, had been issued by the petitioner, for referring of the disputes to Arbitration and *vide* Reply dated 15.10.2021, the liability to pay any amount, was denied. This Reply was followed by the Rejoinder dated 08.11.2021. It is not in dispute that thereafter two Petitions under Section 9 for interim relief were filed before the Saket District Court, New Delhi on 17.04.2021 and were disposed of. The parties thereafter approached the petitioner for amicable resolution of disputes and various negotiations, discussions and meeting took place



between the year 2022 till 2023, though no final settlement could be reached between the parties. As per their own submissions, therefore, negotiations and settlement talks continued during the period of 2022-2023.

23. Moreover, it cannot be overlooked that the disputes had arisen on 26.03.2021 i.e during the COVID period. Furthermore, its only when the negotiation talks failed that the present Petition under Section 11(5) of the Act, has been filed. Even if it is expected that the cause of action arose on 26.03.2021, when the Purchase Order was terminated by the period subsequent to the year 2022-2023 and if these two years are excluded in computing the limitation, the present Petition filed on 13.05.2024, is well within the period of limitation.

24. In the case of Milkfood Ltd. vs. GMC Ice Cream (P) Ltd., (2004) 7 SCC 288, it was observed that the commencement of an Arbitration proceedings for the purpose of applicability of the provisions of Indian Limitation Act, is deemed to have commenced when one party to the Arbitration Agreement, serves on the other a Notice requiring appointment of an Arbitrator. Section 21 of the Act provides, when the arbitral proceedings would be deemed to have commenced indisputably, the service of Notice and/or issuance of request for appointment of an Arbitrator, in terms of the Arbitration Agreement, must be held to be determinative of the commencement of arbitral proceedings.

25. Similar observations were made in the Case of 'Bharat Sanchar Nigam Limited vs. Nortel Networks India Private Limited', (2021) 5 SCC 738, wherein it was observed that mere exchange of letters would not extend the period of limitation for issuing a Notice under Section 21 of the Act, there must be a clear Notice invoking the Arbitration, setting out the



disputes, which must be received by the other party, within the period of three years of cause of action of the date from when the cause of action arises failing which the time barred shall prevail.

26. In the Case of 'Arif Azim Co. Ltd. vs. Aptech Ltd.', 2024 SCC OnLine SC 215, it was thus concluded that the time limit for filing an application under Section 11(6) of the Act, after the Notice of invocation under Section 21 of the Act, has not been specified and therefore, as per Article 137 of Schedule to Limitation Act, three years' time is available for filing Section 11, after from the date of a Notice of invocation. Though, it was observed that the applicability of Article 137 to application under Section 11 (6) of the Act, is a result of legislative vacuum as there is no statutory prescription regarding the time limit three years, is an unduly long period and goes against the spirit of the Act, which provides for expeditious resolution of commercial disputes within a time bound manner. It was opined that the Parliament must consider bringing in her amendment in the Act, 1996, prescribing a specific period within which the Petition under Section 11(6) of the Act, may be filed, after the Notice of invocation under Section 21 of the Act.

27. The other aspect, which has been argued is, that the cause of action arose in March 2021, while the Petition has been filed on 13.05.2024, which makes the claims clearly barred by time. However, as already discussed above, it is the Notice of Invocation under Section 21 of the Act, which has to be filed within three years of cause of action, which in this Case, has been done. The Notice of invocation got filed on 17.09.2021, which was well within a period of three years of the date of cause of action.

28. The objections taken are not tenable, however, it is clarified that this



discussion is purely for the purpose of determination of adjudication of Section 11 of the Act and is without prejudice to the rights of the parties, who agitate these aspects afresh before the learned Arbitrator.

29. In view of the submissions made as well as Clause 11 of the Special Conditions of Contract, which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed and Justice Rajiv Sahai Endlaw (Retd.), (M) 9717495002, is hereby appointed as the sole Arbitrator to adjudicate the disputes between the parties.

30. The parties are at liberty to raise their respective objections before the Arbitrator.

31. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.

32. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

33. The appointment of the Arbitrator shall be governed by the rules framed by the DIAC including the fees and the disclosure to be made by the learned Arbitrator in conformity of Section 12 of the Arbitration and Conciliation Act, 1996.

34. The parties are directed to contact the Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

35. A copy of this Order be also forwarded to the learned Arbitrator, for information.



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Accordingly, the present petition is allowed and disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 13, 2024/RS

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 19.05.2024
09:09:06

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