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

+ ARB.P. 1029/2023, I.A. 19593/2023

M/S PAVING STONE INDIA PRIVATE
LIMITED

..... Petitioner

Through: Ms. Aanchal Jain, adv.

versus

HINDUSTAN PETROLEUM CORPORATION LTD
AND ANR.

..... Respondent

Through: Mr. Avneesh Garg, Ms. Srika S, Ms.
Kanika Sharma, Mr. B B Sethi,
Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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ORDER
09.04.2024

1. The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator for adjudication of dispute *inter se* the parties.
2. Briefly stating, the petitioner is a manufacturer, Trader, and Supplier of interlocking grass pavers, compressed pavers, locking paver blocks, etc., and also engaged in the business of construction and maintenance of roads, pedestrian ways, highways, tunnels, subway.
3. Respondent no. 2 issued a purchase order dated 11.07.2010 to the petitioner herein for the “SOR FOR PAVER WORK IN PRO” for a



sum of around Rs.39,00,000/-, which was to be completed in 45 days.

The sites were allotted at the following places in Panipat, Haryana:

- i) Ganesh Filling Station Ladwa
 - ii) Karan Filling Station
 - iii) Bharti Filling Station Dhanura
 - iv) HP New R.O Bhurangpur.
4. The purchase order contains the arbitration clause with the jurisdiction at New Delhi.
 5. The petitioner submitted that the respondent failed to pass the bills despite various letters and notices issued by the petitioner. It has been submitted that despite repeated communications, a meagre amount was received in the year 2011-12 i.e. an amount of Rs. 6,20,620/- on 27.09.2011 for a bill amount of Rs. 12,73,540.84/- and Rs. 4,93,000/- on 07.03.2012 for bill amount of Rs.6,30,418.44/-. The petitioner has submitted that they have issued a notice dated 04/03/2017 for the release of money. It has been submitted that further, an amount of Rs. 1,27,595.74 against the bill dated 07.03.2012 and Rs. 1,04,528.47 against the bill dated 21.12.2011 were received on 11.05.2017.
 6. The petitioner submitted that they vide several e-mails dated 11.10.2019, 15.10.2019, 17.10.2019, and 24.10.2019 requested time and again for the appointment of a neutral arbitrator, however, neither the payments were released nor an arbitrator was appointed.
 7. It has further been submitted that on account of COVID-19, the entire system was shut down for a period of two years and no steps were taken by the petitioner.



8. The respondents have filed a reply denying the submissions. It is submitted that the present petition has been filed for alleged non-payment of dues under the following two purchase orders PO No.10000045-OS-11110 dated 11.07.2010 and PO No.11000084-OS-11100/TC dated 19.08.2011.
9. It has been submitted that the petitioner has not placed on record all the purchase orders. It has further been submitted that the petition is barred by limitation as the cause of action arose in the present petition as the alleged non-payment of dues under the purchase order dated 11.07.2010 issued by the HPC Officer of Hindustan Petroleum Corporation Limited, Panipat, Haryana.
10. Learned counsel submits that the petition is badly barred by limitation.
11. It has further been submitted that no document has been placed on record regarding any part payment having been made on 11.05.2017
12. Learned counsel for the petitioner submits that, in fact, the respondents were playing the delaying tactics. It has been submitted that the petitioner has been sending e-mail dated 11.10.2019 requesting for payment and appointment of an arbitrator but the same were not responded to.
13. Learned counsel submits that since there is an Arbitration Clause matter may be referred to the Arbitrator.
14. Having heard the learned counsels appearing for the parties and having gone through the material present on the record, there are only two questions that require my consideration i.e., (i) whether the



claims of the petitioner are barred by limitation, (ii) can the claims (if found barred by limitation) be referred to arbitration.

15. It would be appropriate to refer to Section 11 of the Act 1996 which provides for the appointment of arbitrators. Subsection (6) of Section 11 reads thus:

“11(6). Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”

The plain reading of the aforesaid provision would indicate that no time limit has been prescribed for filing application under Section 11(6) of the Act, 1996 for the appointment of an arbitrator.”

16. Further, Section 43 of the A&C Act provides that the Limitation Act, 1963 would apply to arbitrations as it applies to the proceedings in Court.

17. Further, it would be necessary to refer to Article 137 of the Schedule to the Limitation Act, 1963 as 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 reads as under:

“Description of Suit

*Period of
Limitation*

*Time from when
period begins to run*



<i>137. Any other application for which no period of limitation is provided elsewhere in this Division.”</i>	<i>Three years</i>	<i>when the right to apply accrues.</i>
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18. According to a simple interpretation of the aforementioned sections, and Article, the three-year statute of limitations applies to instances covered by Article 137, and the clock starts to tick when the right accrues. The date when "the right accrues" is the beginning point of limitation under Article 137, as stated in the third column of the article.

19. In ***BSNL & Anr vs. Nortel Networks India Pvt. Ltd*** (2021) 5 SCC 738, the Supreme Court *inter-alia* held as under:

“47. It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal.

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“51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [S.S. Rathore v. State of M.P., (1989) 4 SCC 582] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that: “where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” There must be a clear notice invoking arbitration setting out the “particular dispute” [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which



must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.”

(Emphasis Supplied)

20.The purchase order placed on record by the petitioner in the present case is of 11th July 2010. As per the petitioner, the work was completed in 2010-2011. The period of limitation that is to be considered would start from 2011 and expire in 2014. Further, the limitation in this case is not saved even by the order dated 10.01.2022 made by the Hon’ble Supreme Court in *Suo Motu* Writ Petition (Civil) No. 03/2020 whereby the Hon’ble Supreme Court was pleased to direct that running of limitation would be held in abeyance for the period from 15.03.2020 to 28.02.2022 since the limitation in respect of the petitioner’s claim ran-out in 2014 i.e. much before the date of which the Hon'ble Supreme Court’s order takes effect.

21.In view of the above, this court is of the opinion that the petitioner’s claim against the respondent is *ex-facie* time-barred and is accordingly ‘deadwood’; and does not require to be referred to arbitration.

22.The present petition is accordingly dismissed along with the pending application(s) if any.

DINESH KUMAR SHARMA, J

APRIL 9, 2024/K.