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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **OMP (ENF.) (COMM.) 201/2021****M/S JAIPRAKASH HYUNDAI
CONSORTIUM(JHC)**

.....Decree Holder

Through: Mr. Lovekesh Sawhney, Sr.
Advocate with Mr. Rohit Kumar, Adv.

versus

M/S SJVN LIMITED

.....Judgment Debtor

Through: Mr. Uttam Dutt, Ms. Sonakshi
Singh, Mr. Kumar Bhaskar and Mr. Aman
Sanjeev Sharma, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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11.07.2024**OMP (ENF.) (COMM.) 201/2021**

1. This execution petition seeks execution of the recommendation dated 6 August 2005 and 21 November 2006 of the Dispute Review Board (DRB), as modified on 27 June 2007, rendered in terms of Clause 67 of the General Conditions of the Contract (GCC) executed between the petitioner and the respondent. The execution has been filed treating the recommendation of the DRB as arbitral award in view of the judgment dated 27 August 2018, passed by a learned Single Judge of this Court in CS (OS) 958/2009 (*SJVN Ltd v. Jaiprakash Hyundai Consortium*) and CS (OS) 1072/2009 (*SJVN Ltd v. Jai Prakash Hyundai Consortium*), which was subsequently



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upheld by a Division Bench of this Court by judgment dated 18 February 2019 in RFA (OS) 15/2019 (*SJVN Ltd V. Jaiprakash Hyundai Consortium*).

2. The respondent has advanced a preliminary submission that the present execution petition is beyond time, having been preferred more than 12 years after the recommendation of the DRB, even if the date of the said recommendation were to be reckoned as 27 June 2007.

3. Having heard Mr. Sawhney, learned Senior Counsel for the petitioner and Mr. Dutt, learned Counsel for the respondent, I am inclined to agree with the respondent. In that view of the matter, no detailed allusion of facts is necessary.

4. Suffice it, therefore, to state that the petitioner was awarded a contract by the respondent. The contract envisaged resolution of disputes by a detailed procedure, contained in Clause 67, of which the relevant sub clause read thus:

“i) If the Contractor considers any work demanded of him to be outside the requirements of the Contract or considers any decision of the Engineer-in-Charge on any matter in connection with or arising out of the Contract or carrying out of work to be unacceptable, he shall promptly ask the Engineer-in-Charge in writing for written instructions or decision. There-upon the Engineer-in-Charge shall give his written instructions or decision within a period of thirty days of such request.

Upon receipt of the written' instructions or decision, the Contractor shall promptly proceed without delay to comply with such instructions or decision.

If the Engineer-in-Charge fails to give his instructions or decision in writing within a period of thirty days after being requested for



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or if the Contractor is dissatisfied with the instructions or decision of the Engineer-in-Charge, the Contractor may within thirty days after receiving the instructions or decision, file a written appeal with the CMD, NJPC (SJVNL) stating clearly, and in detail, the basis for the objection. The CMD will consider the written appeal and make his decision on the basis of the relevant Contract provisions, together with the facts and circumstances involved in the dispute.' The decision will be furnished in writing to the Contractor within thirty days after the receipt of the Contractor's written appeal.

If the Contractor is dissatisfied with this decision, the Contractor, within a period of fifteen days from the receipt of the decision, shall indicate to the CMD, NJPC (SJVNL) his intention to refer the matter to the Disputes Review Board (ORB) and within a period of another fifteen days shall formally appeal to the Disputes Review Board.

The constitution of the Disputes Review Board and the procedure to be adopted by it for resolving the disputes is elaborated in the Annexure-A, provided, however, all such disputes which may arise to the Constitution of the Board, shall be taken up for consideration at its first meeting convened not later than 30 days upon its constitution. As specified under Para 1 of Annx-A, the disputes involving the individual claims up to Rs.50.00 (fifty) million shall be binding on the NJPC (SJVNL) and the Contractor. In the case of the dispute involving individual claim beyond Rs.50.00 (fifty) million, if in spite of the recommendations/decision of the Disputes Review Board, the dispute remains unresolved, either party, within 15 days of the receipt of the aforesaid recommendations/decision of the Board, may appeal the decision back to the Board for review. However, if even after this review of its recommendations/decision by the Disputes Review Board, the two parties still fail to resolve the dispute, either party may resort to arbitration. In that case, within a period of 30 days of the receipt of the Disputes Review Board's final recommendations/decision, the party desiring to resort to arbitration shall indicate its intention to refer the dispute to Arbitration, failing which, the said final recommendations/decision of the Disputes Review Board shall be conclusive and binding.”

5. The petitioner, as a contractor, raised disputes against the respondent which, after they had unsuccessfully travelled the corridors of the Engineer Incharge (EIC) and the Chairman cum Managing



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Director (CMD) of the respondent, were referred to the DRB. The DRB, by its recommendation dated 21 December 2006, decided the issue in favour of the petitioner. This recommendation was subsequently modified on 4 May 2007 and later on, on 27 June 2007.

6. The respondent filed CS (OS) 958/2009 and CS (OS) 1072/2009, challenging the said recommendation of the DRB before this Court.

7. Before, however, advertent to the said suit, it merits mention that certain other contractors, in whose favour the DRB had taken decision with respect to other contracts, had moved the High Court of Himachal Pradesh under Article 226 of the Constitution of India, for a declaration that recommendation of the DRB, if it involved an amount of less than ₹ 50 million (₹ 5 crores), constituted an “award” within the meaning of Arbitration and Conciliation Act, 1996¹. The High Court of Himachal Pradesh, by judgment dated 7 June 2006 in OMP 113/2005 in Civil Suit 56/2004² held that the decision of the DRB constituted an award to the extent, it did not involve an amount in excess of ₹ 5 crores, which was amenable to challenge under Section 34 of the 1996 Act.

8. While in CS (OS) 1072/2009, the petitioner relying on the judgment dated 7 June 2006 of the High Court of Himachal Pradesh in OMP 113/2005 in Civil Suit 56/2004, moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC),

¹ “the 1996 Act” hereinafter



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seeking dismissal of the suit bearing number CS (OS) 958/2009, as not being maintainable. Though Mr. Sawhney submits that when the application came up before S. Ravindra Bhat J (as his Lordship then was), sitting singly in this Court on 12 March 2010, his Lordship was of the view that the judgment of the High Court may not be correct, no such view is reflected in the order dated 12 March 2010. All that the order records, is that the petitioner withdrew IA 5988/2009 filed by it under Order VI Rule 11 of the CPC. Mr. Sawhney submits that, thereafter, in CS (OS) 958/2009 and CS (OS) 1072/2009, a specific issue was also framed as to whether the recommendation of the DRB constitutes an award within the meaning of the 1996 Act.

9. While CS (OS) 958/2009 and CS (OS) 1072/2009 were pending before this Court, CS (OS) 1510/2013 (*SJVN Ltd v. Jaiprakash Hyundai Consortium*), also instituted by the respondent against the petitioner, came to be decided by Manmohan J, by judgment dated 27 August 2018, agreeing with the judgment dated 7 June 2006 of the High Court of Himachal Pradesh and holding that the recommendation of the DRB constituted an award within the meaning of the 1996 Act.

10. Be that as it may, CS (OS) 1510/2013 came to be decided by a learned Single Judge of this Court (Manmohan J as the learned ACJ then was) on 27 August 2018, in which the learned Single Judge concurred with the view expressed by the High Court of Himachal Pradesh in OMP 113/2005 in Civil Suit 56/2004 (*Satluj Jal Vidyut*

² *Satluj Jal Vidyut Nigam Limited v. M/s. Nathpa Jhakri Joint Venture*



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Nigam Limited v. M/s. Nathpa Jhakri Joint Venture). Paras 10 to 13 of the judgment of Manmohan J read thus:

“10. Consequently, in view of the judgment in Satluj Jal Vidyut Nigam Limited (supra), this Court is of the view that the relief sought by plaintiff for declaration that the decisions of the DRB dated 20th September, 2008 and 12th August, 2009 are factually and legally correct, is not maintainable.

11. This Court is further of the view that it cannot decree the amount that has already been awarded by the DRB as the said dispute had already been adjudicated in favour of the plaintiff and against the defendant. Grant of such a relief would also amount to re-litigation and re-determination of disputes that had already been adjudicated upon by a Forum agreed upon between the parties.

12. In the event, the defendant refuses to pay to the plaintiff for any reason whatsoever, the remedy lies with the plaintiff in filing appropriate proceedings in accordance with law.

13. Consequently, the present suit is dismissed with liberty to the plaintiff to file appropriate legal proceedings in accordance with law. The rights and contentions of all the parties are left open.”

11. As already noted, the judgment dated 27 August 2018 of Manmohan J was challenged by the respondent before the Division Bench of this Court by way of RFA (OS) 15/2019 (**SJVN Limited v. Jaiprakash Hyundai Consortium**), which came to be dismissed by the Division Bench by order dated 18 February 2019.

12. Relying on the judgment dated 27 August 2018 of Manmohan J in CS (OS) 1510/2013, the present petitioner filed applications i.e. IA No. 15855 of 2021 under Order VII Rule 11 of the CPC in CS (OS) 958/2009 and IA No. 15850 of 2021 under Order VII Rule 11 of the CPC in CS (OS) 1072/2009. The said applications were allowed, and



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CS (OS) 1708/ 2008, CS (OS) 958/2009 and CS (OS) 1072/2009 were dismissed by a coordinate Bench of this Court, relying on the judgment dated 27 August 2018 of Manmohan J on 2 December 2021.

13. The present execution petition was filed on 16 December 2021 thereafter, seeking execution of the recommendation of the DRB, finally rendered in 2006/2007. Irrespective of whether the recommendation of the DRB is to be treated as having been rendered in 2006 or 2007, therefore, the present execution petition has clearly been filed beyond 12 years from the said recommendation. In these circumstances, Mr. Uttam Dutt, learned Counsel for the respondent submits that the execution petition is barred by time and cannot be entertained.

Submissions of Mr. Sawhney, for the petitioner

14. Mr. Sawhney, learned Senior Counsel for the petitioner, contests Mr Dutt's submission that the present Execution Petition is barred by time. He submits that the issue regarding the status of the DRB recommendation was in a state of flux till 27 August 2018, on which date alone this Court had clarified that the DRB recommendation has to be treated as an award. According to Mr. Sawhney, therefore, as this legal position was crystalized only on 27 August 2018, the period of 12 years provided under Article 136 of the Limitation Act should be reckoned from 27 August 2018 and not from 2006 or 2007.



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15. Mr. Sawhney submits, secondly, that the petitioner cannot, in any event, be non-suited on the ground of limitation in view of the liberty granted by para 13 of the judgment dated 27 August 2018 of Manmohan J in CS (OS) 1510/2013. He points out that, in para 12, this Court had specifically held that if the respondent refused to pay the petitioner the amount awarded to it for any reason whatsoever, the petitioner was at liberty to institute the appropriate proceedings in accordance with law. The petitioner cannot, therefore, he submits, now be non-suited on the ground of limitation in the present proceedings as after passing of the judgment dated 27 August 2018, the respondent again refused to honour the decision of the DRB. The petitioner by virtue of the liberty granted by para 13 of the judgment of Manmohan J, therefore, is entitled to institute the present proceedings.

16. To buttress the submission that the legal position was in a state of flux, Mr. Sawhney relies on the order dated 12 March 2010 passed by Ravindra Bhatt J in IA 5988/2009 filed by the petitioner. He submits that IA 5988/2009 was specifically filed under Order VII Rule 11 of the CPC, relying on the judgment dated 7 June 2006 of the High Court of Himachal Pradesh in OMP 113/2005 in Civil Suit 56/2004. As this Court apparently expressed its inability to agree with the view of the High Court of Himachal Pradesh, the petitioner withdrew IA 5988/2009. The fact that the issue continued to remain disputed, he submits, is apparent from the framing of specific issue in CS (OS) 958/2009 and CS (OS) 1072/2009 as to whether DRB recommendation was or was not an award within the meaning of the



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1996 Act.

17. Finally, Mr. Sawhney submits that, if the Court were to take a hypertechnical view of the matter, it would render the recommendation of the DRB, admittedly, in favour of the petitioner, unenforceable. This, he submits, would be a complete travesty of justice.

Analysis

18. Having heard learned Counsel for both sides and considered the legal position, it is clear that the petitioner cannot maintain the present execution petition for the simple reason that it is beyond the period of 12 years provided under Article 136 of the Limitation Act, and, by virtue of the express exclusion contained in Section 5³ thereof, delay in preferring an execution petition under Order XXI of the CPC cannot be condoned and there is no provision for condonation of delay in filing an execution petition. Section 43(1)⁴ of the 1996 Act makes the provisions of the Limitation Act applicable, *mutatis mutandis*, to arbitrations. Any execution petition, which is preferred beyond a period of 12 years from the date of the order, which is sought to be executed, has therefore necessarily to be dismissed. The Court has no latitude in that regard.

³ 5. **Extension of prescribed period in certain cases.** – Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. – The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

⁴ 43. **Limitations.** –

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to



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19. Mr. Dutt also points out that no stay was granted by this Court, of the recommendation of the DRB, in CS (OS) 958/2009 and CS (OS) 1072/2009. Ergo, it is clear that recommendations of the DRB were enforceable immediately. Proceedings for execution of the recommendation had, therefore, to be initiated within 12 years of the recommendation.

20. The judgment dated 27 August 2018 was merely declaratory of the position in law. There is no observation, much less any finding in the judgment dated 27 August 2018, which makes it applicable only prospectively. The period of limitation, therefore, for filing an application for execution of the recommendation of the DRB rendered in 2006 -2007, therefore, was not extended or postponed in any manner by the judgment dated 27 August 2018.

21. The judgment dated 27 August 2018 of Manmohan J was challenged by the respondent before the Division Bench of this Court by way of RFA (OS) 15/2019, which also came to be dismissed by the Division Bench on 18 February 2019.

22. I am unable to agree with any of the contentions advanced by Mr. Sawhney.

23. Mr. Sawhney's contention that the period of 12 years can be reckoned in the present case from 27 August 2018, i.e. when this

proceedings in court.



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Court dismissed CS (OS) 1510/2013 and held the DRB recommendation to amount to an award, does not commend itself to acceptance. The mere fact that this position may have been declared by this Court on 27 August 2018, cannot rewrite Article 136 of the Limitation Act. Article 136 of the Limitation Act envisages reckoning of the period of 12 years from the date when the decree or order, of which execution is sought, becomes enforceable. Inasmuch as the recommendation of the DRB became enforceable immediately on its being rendered, there is no question of postponing the *terminus ad quem* for reckoning the starting point for computing limitation for the petitioner to move for execution of the recommendation, to 27 August 2018.

24. Apropos liberty granted by Manmohan J, in his judgment dated 27 August 2018, it is seen that the said liberty was not granted in CS (OS) 958/2009 and CS (OS) 1072/2009, but in CS (OS) 1510/2013 (*SJVN Ltd v. Jaiprakash Hyundai Consortium*). Accordingly, the petitioner cannot seek to avail benefit thereof. Even if it were to be assumed that liberty was granted to the petitioner, that cannot postpone the *terminus a quo* determined by Article 136 of the Limitation Act to the date when the judgment was rendered by Manmohan J on 27 August 2018 in CS (OS) 1510/2013.

25. Mr. Dutt also points out that there was no stay, at any point of time, of the recommendation of the DRB. There was, therefore, no impediment in the petitioner filing for execution of the said recommendation.



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26. It also bears mention that as far back as on 7 June 2006, the High Court of Himachal Pradesh had already declared that a recommendation of the DRB was an award within the meaning of the 1996 Act. There was nothing which prevented the petitioner, thereafter, to seek enforcement of the recommendation of the DRB by moving an execution petition. If the petitioner chose to wait till 2021, and the passing of the order by this Court on 2 December 2021 in CS (OS) 958/2009 and CS (OS) 1072/2009, the petitioner has itself to blame. It cannot, on that basis, now seek to submit that the execution petition filed much beyond 12 years from the date of DRB recommendation should be entertained. The Court can do that only by rewriting the statute and reckoning the period of limitation for Article 136 of the Limitation Act from 2021, instead of 2007, when the DRB came to render its recommendation. That is obviously impermissible.

27. For all these reasons, the Court is constrained to hold that the present execution petition, having been filed more than 12 years beyond from 27 June 2007– treating that to be the date of the DRB recommendation – is not maintainable, as it is barred by time.

28. The petition is accordingly dismissed.

C.HARI SHANKAR, J

JULY 11, 2024

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Click here to check corrigendum, if any