

OCD 74

ORDER SHEET
AP-COM/585/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S STAR CONSTRUCTION AND ORS.
VS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 17th September, 2025.

Appearance:
Mr. S. Nandy, Adv.
Mr. Somnath Saha, Adv.
...for the petitioner

Mr. Ratul Das, Adv.
Mr. Abhishek Banerjee, Adv.
Ms. Debasmita Nandi, Adv.
...for the respondents

The Court:

1. This is an application for appointment of an Arbitrator in terms of Clause 25 of the work order dated April 1, 2019, which was issued in favour of the petitioner no.1 by the respondent. The petitioner nos.2 to 5 are the partners of the petitioner no.1.

2. Learned advocate for the petitioner submits that this is a fit case for reference of the dispute to arbitration, inasmuch as, more than Rs.57 lakhs (approximately) on account of unpaid R/A Bills, non-refund of security deposit

and interest, had fallen due as on the date of issuance of the notice invoking arbitration on June 2, 2025. It is contended that the chart enclosed in the supplementary affidavit discloses the bank transactions. Most of the entries indicate payments which have been received from Simplex and it is submitted that last of such payment was received in June, 2022. Reference is further made to an order passed by a coordinate Bench in an interlocutory proceeding arising from a suit between the respondent and the State of West Bengal, to substantiate that the dispute is alive.

3. It is contended that the petitioner was requested to execute civil works in respect of the work order awarded to the respondent, by the State of West Bengal. The order of His Lordship would clearly indicate that the dispute continued upto 2023, between the State of West Bengal and the respondent and there were couple of extensions. Such extensions meant that the petitioner was required to execute the work after those extensions, upto 2023. Thus, the dispute is very much alive and the claim should not be treated as dead wood.

4. Mr. Ratul Das, learned advocate for the respondent submits that after April, 2021, the respondent had not made a single payment to the petitioner. The R/A Bills were submitted lastly in June, 2021. Thereafter, the petitioner sat quiet. This silence clearly indicated that nothing was due and payable. The invocation was made sometime in June, 2025, which was barred by the laws of limitation inasmuch as, the invocation ought to have been made within three years from the date of accrual of the cause of action i.e., within three years from the date the money became due and payable. Mr. Das has taken the Court through the averments in the affidavit-in-opposition and the chart enclosed, to

substantiate that payments made by respondent were by RTGS or other modes of bank transfer and the name of the respondent was incorporated in such statement of accounts. The payments which were relied upon by the petitioner were cash payments to Mr. Tapan Boul sometime in June, 2022, who is one of the partners of the petitioner no.1. Such cash transaction to one of the partners could not be a part of the business transaction. Moreover, it is submitted that the learned coordinate Bench recorded the facts, but did not arrive at any finding that, even after 2022-2023, the petitioner continued to work.

5. I have considered the rival contentions of the parties. It is true that the referral Court can refuse to refer a dispute to arbitration, if it finds that the claims are *ex facie* deadwood, or *ex facie* mala fide and non-arbitrable. The question now arises as to whether in the facts of this case, the referral court should refuse to refer the dispute to arbitration. The fact that the petitioner No. 1 was issued the work order on April 1, 2019, is admitted. The work comprised of all civil works at Bijohnagar site. The work order contemplated that the time for execution of the various phases of the work would be as per the instruction of the resident engineer of the respondent. The milestones would be categorically laid down by the resident engineer.

6. It appears that the petitioner No. 1 was functioning on a rate contract basis and no time was stipulated for completion of the work. It, *prima facie*, appears that the work was continuing during the subsistence of the contract between the State of West Bengal and the respondent, i.e. at least upto 2023.

7. Clause 2 of the General Terms and Conditions specially provided that the rates indicated in the schedule of item rates enclosed vide Annexure-I with the work order, would remain valid for any quantum of work to be executed. Thus, neither any time period nor any specific nature of work had been stipulated. The petitioner no.1 was required to function as per the instruction and schedule prepared by the resident engineer. The work continued. Thereafter, there was some disruption in the work and disputes arose between the State of Bengal and the respondent.

8. Clause 23 of the work order provides that in the event the workmen left the site without completing the work assigned to them, the respondent would be at liberty to get the work done by any other contractor or agency at the cost and responsibility of the petitioner no.1. The amount so incurred in getting the work completed by an outside agency would be recovered from the outstanding bills of the petitioner.

9. Clause 25 contained the arbitration clause and was specifically stated that in case there were disputes and they were referred to arbitration, the work should not stop.

10. Under such circumstances, this Court, prima facie, finds that even if the work could not continue for a while, the petitioner No. 1 was required to keep its men, agents and machinery deployed in the site and accordingly, the petitioner No. 1 was also incurring expenses for such deployment. Although, Mr. Das relies upon a letter written by the respondent to the Superintending Engineer (Civil), R.C.F.A. Development Project Housing Directorate dated November 6, 2023, inter alia, stating that, the work was stopped after June 30, 2021, in my

opinion, such document cannot be the only ground for this Court to hold that no work took place after June 30, 2021 or that the petitioner had not incurred any expenses after June, 2021. Likewise, it is impossible for this Court to hold conclusively that the payment made after 2022, was not in the course of business between the parties. This is a matter of evidence and the petitioner has to prove the same. Last of such bill which was raised by the petitioner and acknowledged was in June 2021. The petitioners contend that subsequently other bills were raised in 2022 which were not acknowledged and accepted.

11. It appears from the order passed by the coordinate Bench that the contract between the State Government and the respondent was foreclosed on June 12, 2023. On June 27, 2024, the authority had written to the respondent to clear the site and remove the plants and equipments from the project site, which, prima facie, means that, the petitioner No. 1, which was undertaking the civil works, had the plant and machinery deployed at least till June 27, 2024.

12. In ***SBI General Insurance Co. Ltd. vs Krish Spinning*** reported in **2024 SCC Online SC 1754** the Hon'ble Apex Court held as follows:-

“**128.** On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963, i.e., 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.”

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133. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in In Re : Interplay (supra)."

13. In ***Bharat Sanchar Nigam Limited and Anr. vs Nortel Networks India Private Limited*** reported in **(2021) 5 SCC 738**, the Hon'ble Apex Court held as follows:-

"38. Limitation is normally a mixed question of fact and law, and would lie within the domain of the Arbitral Tribunal. There is, however, a distinction between jurisdictional and admissibility issues. An issue of "jurisdiction" pertains to the power and authority of the arbitrators to hear and decide a case. Jurisdictional issues include objections to the competence of the arbitrator or tribunal to hear a dispute, such as lack of consent, or a dispute falling outside the scope of the arbitration agreement. Issues with respect to the existence, scope and validity of the arbitration agreement are invariably regarded as jurisdictional issues, since these issues pertain to the jurisdiction of the tribunal.

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44. The issue of limitation which concerns the "admissibility" of the claim, must be decided by the Arbitral Tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties.

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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."

14. In the ***Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1***, the Hon'ble Apex Court held as follows:-

“135. In *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.* [UttarakhandPurvSainikKalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] the issue before this Court was whether a Referral Court at the stage of appointment of arbitrators would be required to decide the issue of limitation or leave it to the Arbitral Tribunal. A Bench of two Judges of this Court held that the doctrine of competence-competence is “intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties.” Moreover, this Court held that Section 16 is an inclusive provision of very wide ambit : (SCC p. 462, para 7)

“7. ... 7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, “including any objections” with respect to the existence or validity of the arbitration agreement. Section 16 is an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.”

15. Under such circumstances, it would be unjust for this Court to hold that the claim as regards outstanding dues was barred by limitation. The issue of limitation here, becomes a mixed question of law and facts.

16. Under such circumstances, the application is allowed, leaving it open to the respondent to raise all objections, including the question of limitation, before the learned Arbitrator. The contention of the petitioners that, the petitioner No. 1 continued to deploy its men and agents in the site and that, by

virtue of the extension, the work continued even in 2023, persuades this Court to hold that the dispute cannot be disregarded and thrown out at the threshold.

17. Under such circumstances, the Court appoints Mr. Dipanjan Dutta (Mob – 9830468018), learned Advocate, Bar Association as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his/her own remuneration as per the Schedule of the Act.

18. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)