



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO. 18 OF 2023

Trimurti Food Tech Private Limited Through Successful Resolution Applicant
Mr Jitendra Bhandari

VERSUS

Dharampal Premchand Limited

Mr. L. B. Palod, Advocate for Applicant

Mr. Brajesh Kumar a/w Mr. N. S. Tekale, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 07th May, 2025

PER COURT :-

1. This application is filed under Section 11 of Arbitration and Conciliation Act, 1996 (for short “the act of 1996”) for appointment of arbitration.

2. At the outset, this Court would like to record admitted facts as they appear from the material placed before this Court. There is no dispute about the fact that there were agreements entered into between the parties on 16.11.2013 and 20.08.2014. Both these agreements contain arbitration clause. Further there are the disputes arisen between the parties, which is clear from notice dated 12.04.2022 came to be issued on behalf of applicant to the respondent calling upon respondent to pay compensation to the extent of Rs.

55,68,00,000/-. This notice was replied by respondent on 13.05.2022. It was stated therein that the respondent is entitled to recover a sum of Rs. 88,09,000/- from applicant. Thereafter notice of invocation of arbitration clause came to be issued at the instance of the applicant on 01.06.2022. This notice is also duly received by respondent and replied on 08.07.2022 contending amongst other statements that there is no business relationship with the applicant. A reference is made to the termination of the contract between the parties. In the light of these facts, present application came to be filed for appointment of arbitrator.

3. Learned counsel for applicant has drawn attention of this Court to the proceedings under the Insolvency and Bankruptcy Code, 2016 including appointment of interim Resolution Professional (RP) on 19.06.2022 with final order of appointment on 11.08.2021. It is his submission that for the purpose of invoking provisions of Section 11, applicant is required to satisfy this Court that there exist the arbitration clause in the agreement between the parties and that such arbitration clause is duly invoked. He drew attention of this Court to the agreements between the parties to indicate that it was not open for the respondent to terminate the said agreement before expiry of period of 18 months. He then raises disputes about legality of termination of contract by respondent. He places reliance on the judgment of Hon'ble Supreme Court in case of **Sushma Shivkumar Daga and anr vs. Madhurkumar Ramkrishnaji Bajaj and ors in**

Civil Appeal No. 1854/2023 , Vedanta ltd. Thr. Auth. Sign, Benecio Menezes vs. Prowess Internations Pvt. Ltd. 2024(2) Mh.L.J.384 and Abhijeet Mahendra Darvekar and another vs. Sampad Rabindranath Bisal and another 2025(1) Mh.L.J.594.

4. Learned counsel for respondent resisted the application on the ground that the claim sought to be raised now is time barred. In this regard, it is his submission that the agreement of year 2013 is superseded by agreement dated 20.08.2014 and since the said agreement has already been terminated with effect from 20.12.2017, question of entertaining present application does not arise. According to him, it is not open for this Court to appoint an arbitrator in respect of apparently time barred claim. To support his submission, he placed reliance on the judgment of Hon'ble Supreme Court in case of Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited (2021) 5 SCC 738.

5. There is no dispute about the fact that there were two agreements entered into between the applicant and respondent in the year 2013 and 2014. Question about the supersession of agreement of 2013 by subsequent agreement cannot be gone into by this Court under Section 11 of the Act of 1966. Similarly, the issue as to the validity of the termination is also beyond the scope of the jurisdiction of this Court under Section 11. There are couple of contentious issues

between parties among other issues. At this stage, it would be relevant to take note of the paragraph 47 and 49 of the judgment cited supra in case of Bharat Sanchar Nigam Limited.

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.

49. The present case is a case of deadwood/no subsisting dispute since the cause of action arose on 4-8-2014, when the claims made by Nortel were rejected by BSNL. The respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the final bill by making deductions."

Hon'ble Supreme Court in this judgment thus has held that any from 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 not arbitrable, that the Court may decline to make the reference. However, if there is even the slightest doubt, the rule refer the disputes to arbitration. Similarly in the said case more was rejection of claim long back and hence said case was condoned as deadwood. Having regard to the facts of the case, it cannot be said so about present case. Further there are issues which require adjudication including issue of limitation sought to

be raised by respondent. Hence, this judgment won't come to the aid of respondent to seek dismissal of application.

6. There is compliance of Section 21 of the Act of 1996. The facts as they appear from the record clearly indicate that there are disputes/issues like the validity of termination of contract, supersession of agreement of year 2003, action taken by the applicant against the respondent, etc. Disputed facts cannot be adjudicated by this Court in this proceeding, as the same would be subject matter within jurisdiction of Arbitral Tribunal. Once, arbitrable issues are made prima facie before this Court and the same is preceded by the valid arbitration agreement, there is no question of rejection of application for appointment to the arbitration under Section 11 of the Act of 1996.

7. Hence, Application stands allowed.

8 . Justice Shri. S. V. Gangapurwala (Retired) is appointed as arbitrator.

9. This order be communicated to the learned Arbitrator.

(R. M. JOSHI, J.)

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