

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 328 OF 2025

M/s.Rumao Construction .. Applicant
Versus
Union of India and anr .. Respondents
...

Mr. Pratik Dixit i/b Bhavesh Magam for the applicant.
Mr. Aamir Qureshi for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 19th DECEMBER, 2025

P.C:-

1 Though the learned counsel for the petitioner sought withdrawal of the Petition in the morning, and the order was uploaded, in the post-lunch, he come up with a statement he has no instructions to withdraw the Petition and the Court shall decide the matter on merits.

2 In the application seeking appointment of an Arbitrator, in the wake of the dispute that had arisen out of the Agreement for Works executed between the applicant and the Western Railways, the applicant staking a claim on 20/4/2009, regarding balance work and compensation for the prolonged period of contract, with the arbitration being invoked by the said communication, the application under Section 11 is filed in the year 2025.

3 The learned counsel Mr.Singh appearing for the Railways raise an objection about the prayer for appointment of an arbitrator and making reference of the dispute to the arbitrator being time barred and according to him, it being a dead wood.

4 The Hon'ble Apex Court in **BSNL Vs. Nortel Networks India Ltd**¹, had considered the aspect of limitation both in filing an application under Section 11, which is held that upon failure to make an appointment of an arbitrator within 30 days of issuance of notice invoking arbitration, the cause arise for filing an application under Section 11.

Pronouncing upon another issue whether the Court while exercising jurisdiction under Section 11, is obligated to appoint an Arbitrator even in a case where the claims are ex-facie time barred, in paragraph no.19 of the law report, the Apex Court referred to the legislative history of Section 11 and also considered the post-amendment position when 1996 Act came to be amended which came into force with effect from 23/10/2025 and in particular, by insertion of Section 6A and Section 6B in Section 11.

5 Referring to the principle laid down in **Vidya Drolia Vs. Durga Trading Corporation**² the Court held thus :-

“In a recent judgment delivered by a three-judge bench in Vidya Drolia vs. Durga Trading Corporation, on the scope of power under [Sections 8](#) and [11](#), it has been held that the

1 (2021) 5 SCC 738

2 (2021) 2 SCC 1

Court must undertake a primary first review to weed out “manifestly ex facie non-existent and invalid arbitration agreements, or non-arbitrable disputes.” The prima facie review at the reference stage is to cut the deadwood, where dismissal is bare faced and pellucid, and when on the facts and law, the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration agreement exists, or that the subject matter is not arbitrable, that reference may be refused. In paragraph 144, the Court observed that the judgment in Mayavati Trading had rightly held that the judgment in Patel Engineering had been legislatively overruled.

Paragraph 144 reads as :

“144. As observed earlier, Patel Engg. Ltd. explains and holds that [Sections 8](#) and [11](#) are complementary in nature as both relate to reference to arbitration. [Section 8](#) applies when judicial proceeding is pending and an application is filed for stay of judicial proceeding and for reference to arbitration. Amendments to [Section 8](#) vide Act 3 of 2016 have not been omitted. [Section 11](#) covers the situation where the parties approach a court for appointment of an arbitrator. Mayavati Trading (P) Ltd., in our humble opinion, rightly holds that Patel Engg. Ltd. has been legislatively overruled and hence would not apply even post omission of sub-section (6-A) to [Section 11](#) of the Arbitration Act. Mayavati Trading (P) Ltd. has elaborated upon the object and purposes and history of the amendment to [Section 11](#), with reference to sub-section (6-A) to elucidate that the section, as originally enacted, was facsimile with [Article 11](#) of the Uncitral Model of law of arbitration on which the [Arbitration Act](#) was drafted and enacted.” (emphasis supplied) While exercising jurisdiction under [Section 11](#) as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere “only” when it is “manifest” that the claims are ex facie time barred and dead, or there is no subsisting dispute.”

6 The Court therefore, observed that while exercising the jurisdiction under Section 11 of the judicial forum, the

Court may examine prima facie case to screen, and knock down ex-facie, meritless, frivolous and dishonest litigation, as limited jurisdiction of the Courts would ensure expeditious and efficient disposal at referral stage.

It further clarified that at the referral stage, the Court can interfere only “unless it is manifest” that the claims are ex-facie time barred or dead, and there is no subsisting dispute, the reference can be refused.

7 Applying the aforesaid principle to the facts of the case, by recording that the case was, a case of deadwood/no subsisting dispute, since despite the cause of action having arisen on 4/8/2014, when the claims made by Nortel were rejected by BSNL, the notice invoking arbitration was issued on 29/4/2020.

Recording that the period of limitation for issuing notice of arbitration will not be extended merely by exchange of letters or merely settlement discussions where a final bill is rejected by making deductions or otherwise, the conclusion is recorded in paragraph no.40 in the following words:-

“40. Conclusion

“ Accordingly, we hold that :

- (i) The period of limitation for filing an application under [Section 11](#) would be governed by [Article 137](#) of the [First Schedule of the Limitation Act, 1963](#). The period of limitation will begin to run from the date when there is failure to appoint the arbitrator;”

8 As far as the present case is concerned, pursuant to the agreement entered, a dispute was raised in 2009 by the petitioner, as against the Railways, and by a detailed communication, staking 18 claims including the claim of cost and litigation, and the claim for compensation. Specifically stating that the special conditions of the contract agreement, had stipulated that clause 63 and 64 are not applicable in case the claim amounting to more than 20% of the cost of work and that is the specific reason the arbitration was invoked, by clearly contemplating the dispute therein and also stating that the competent authority shall take decision upon the claimant's claim and communicate the said decision to the claimants, but if claimant's claim is admissible, an appropriate order be passed, directing the concerned Officer to release the payment in favour of the claimant, but if it is not acceptable to the Railways, even under such events, Railway was called upon to appoint arbitrators, under the clause for appointment of Arbitrators to adjudicate the claimant's claim judicially and publish the award.

The statement of claim with its classification was specifically set out as early as in 2009. The Arbitration Petition was filed, but it was withdrawn and subsequently, the proceedings came to be filed on 6/5/2013, but it received registration only on 13/10/2025.

The application which appear before me today, seek appointment of an arbitrator to resolve the disputes which had

arisen and set out in the notice of 2009 and the question that arises for consideration whether this claim can now be referred to arbitration belatedly, as all the while the proceedings were filed in the year 2013, for the period of time when the fault is attributed to the Advocate, no steps were taken for reference of the dispute to the Arbitrator. Now, when the dispute is sought to be referred in the year 2025, the question is whether it is a dead wood.

There may be sufficient justification for the applicants to allege that the proceedings did not receive due registration and the delay in the restoration of the proceedings has been condoned by this Court but the question that arises for consideration is whether this dispute now deserve a reference to arbitration, being 'dead wood'.

9 The Apex Court in case of **Arif Azim Company Limited Vs. Aptech Limited**³, has once again focussed upon the issue of limitation.

With reference to the decision in Nortel Networks (supra), the Apex Court clearly noted that it is the settled position of law that limitation period under Article 137 of the Limitation Act, 1962, will commence only after the right to apply has accrued in favour of the applicant.

When an application under Section 11(6) of the 1996 Act is made to the Court without exhausting the mechanism provided under the sub-section, including that of

³ (2024) 5 SCC 313

invoking arbitration by issuance of formal notice, the Court is not bound to appoint an arbitrator and can reject the application being pre-mature and non-compliant. However, once the procedure laid down under Section 11(6) of the Act is exhausted and the application is held to have passed all other tests of limited judicial scrutiny, the Court shall appoint an arbitrator.

However, while making a reference, the Court will definitely weed out dead wood and ex-facie time barred claim as even, Civil Suit in respect of such a time barred claim cannot be entertained.

Merely because the arbitration has been invoked on more than one occasion, the cause of action cannot be made alive and in this case, when the discord was clearly set out in the year 2009 itself, and taking into consideration the fact that the limitation prescribed under the Limitation Act, 1963, and being made applicable by various statutes, has a significance, as vested rights are created in favour of the other party and after a considerable length of time, they definitely cannot be disturbed.

Similarly, as the learned counsel has stated that it was very difficult for him to trace the papers and it must be noted that even the file was not traceable in the department because of the passage of time and we are doubtful whether any evidence would be left in the hands of the claimant to be set up before the Arbitrator.

This is the specific reason why the reference to the Arbitrator at this stage is no less than an empty formality particularly, because the cause has now become a dead wood.

Hence, I refuse to entertain the application and dismiss the same.

(BHARATI DANGRE, J)