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

+ **ARB.P. 49/2025**

M/S SHIVAH INFRAVENTURE LLP

.....Petitioner

Through: **Ms. Pooja, Advocate (through VC)**

versus

UNION OF INDIA

.....Respondent

Through: **Mr. Vivek Sharma, Senior Panel
Counsel with Ms. Prenaa Singh,
Advocate**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 30.04.2025

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('the Act of 1996') for appointment of an arbitrator to adjudicate the claims of the Petitioner.
2. It is stated in the petition that the disputes between the parties emanate from a Letter of Acceptance dated 3.07.2019 which was awarded to the Petitioner for a project¹.
3. The arbitration clause is contained in Clause 64 of the Indian Railways Standard General Conditions of Contract ('GCC').
4. Learned counsel for the Petitioner states since there were disputes between the parties, therefore, the Petitioner invoked the said arbitration clause vide legal notice dated 04.10.2024. The same was, however, replied to

¹ Raising of existing PF No. 1 & 2 at GUH & PF No. 2 at DXH from Rail Level to High level in the section of SSE/WIEIGZB under ADENIGZB"



vide letter dated 16.10.2024 wherein the Respondent did not consent to constitute the Arbitral Tribunal by raising the objection of limitation.

4.1. He states that, therefore, in these circumstances the Petitioner has approached this Court for the appointment of an Arbitrator to adjudicate the disputes between the parties. He states that the claim amount is approximately 70 lakhs.

5. Notice was issued in this petition on 10.01.2025.

6. Learned counsel for the Respondent has filed a reply and has argued on the same issue of limitation.

6.1. He states that Respondent does not dispute the existence of the arbitration clause. However, he objects appointment of an Arbitrator on the ground that the suit is barred by limitation.

6.2. He refers to clause 64(1) (i) of the GCC stating that the clause stipulates that the claim ought to be filed by the Contractor within 180 days of presenting the final claim and demand in writing for the matter to be referred to arbitration.

6.3. He states in the present case, as per the Petitioner the cause of action accrued on 19.05.2020; however, the arbitration clause was invoked belatedly on 04.10.2024. He states that the limitation for raising the claims for reference to arbitral proceedings is 180 days.

6.4. In addition, he states that a claim for compensation, for the alleged breach of any contract as per the Article 55 of the Schedule to the Limitation Act, 1963 is three years. He states that the invocation of the arbitration clause on 04.10.2024 (which is approximately after 4 years and 5 months) is barred by limitation. Therefore, the present invocation is beyond the prescribed limitation period.



6.5. He further states that the Petitioner has concealed that the Respondent had closed the project work owing to administrative grounds on 19.05.2020 and the earnest money deposited by the Petitioner was refunded and therefore, nothing is due and payable to the Petitioner on any account by the Respondent. He states that the Petitioner is trying to raise a non-arbitrable dispute through the present petition which cannot be entertained.

Decision

7. This Court has considered the submission of the parties.

8. Learned counsel for the Respondent does not dispute the existence of Letter of Acceptance or the arbitration clause stated in GCC, however, he has opposed the petition on two grounds (i) firstly, the claim is barred by limitation since the demand for appointment of the Arbitral Tribunal by the Petitioner was not made within 180 days i.e., the time as stipulated in the contract i.e. GCC and as per Article 55 of the Schedule to the Limitation Act, 1963 since the claim is beyond 3 years; (ii) secondly, the arbitrability of the claims raised are disputed since there has been concealment of material facts by the Petitioner.

First objection : Barred by limitation

9. With regard to the first objection, the law is well settled. In this regard it would be relevant to refer to the decision passed by the Supreme Court in **Grasim Industries Limited v. State of Kerala**² wherein the Supreme Court held that an arbitration clause which restricts the period for raising an arbitral dispute will be void in view of Section 28 of the Indian Contract Act, 1872; and the limitation period will continue to be governed by Schedule of the Limitation Act. The relevant extract of the judgment reads as under:

² (2018) 14 SCC 265



“9. Having perused Clause 9 of the supplementary agreement dated 27-10-1988, we are of the view that the interpretation placed by the High Court on Clause 16, was wholly misconceived. The aforesaid clause, did not postulate the period within which a claim could have been raised by the parties to the contractual agreements. Even otherwise, we are of the view that **in terms of Section 28 of the Contract Act, 1872, such a stipulation in a contractual obligation would not be valid and binding.**

11. Section 28(b) unequivocally provides that an agreement which extinguishes the right of a party on the expiry of a specified period, would be void. **Therefore, even if a restricted period for raising an arbitral dispute had actually been provided for (as was determined in the impugned order), the same would have to be treated as void.**

12. In view of the legal position expressed hereinabove, **the limitation with reference to the claim raised by the appellant, would have to be determined only under Article 137 of the Limitation Act.”**

(Emphasis supplied)

10. A coordinate bench of this Court in **Subhash Chand Saini v. Govt. of NCT of Delhi**³ following the aforesaid decision passed by Supreme Court observed as under:

“10. The question whether the period of invoking the arbitration could be restricted to a period less than as provided under the Limitation Act, 1963 is no longer *res integra*.

11. In *Grasim Industries Limited v. State of Kerala* : (2018) 14 SCC 265, the Supreme Court considered an appeal from an order where the appellant was non suited on the ground that the demand for appointment of the Arbitral Tribunal was not made within the time as stipulated in the arbitration agreement. The Supreme Court found that the relevant clause did not stipulate any time and further held as under:

.....

13. The contention that the claims made by the petitioner are time barred is also without merit. **There is a distinction between the disputes being barred by limitation and the petition under Section 11 of the A&C being barred by limitation.** The period of limitation for filing the petition

³ 2021 SCC OnLine Del 4648



would run from receipt of notice under Section 21 of the A&C Act and since no specific period is specified, Article 137 of Limitation Act, 1963 would apply (See - *Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited* : (2021) 5 SCC 738).

14. The period of limitation for the disputes will commence from the date of cause of action till invocation of the agreement to refer the disputes to arbitration. **The question whether the disputes are within the period of limitation falls within the jurisdiction of the Arbitral Tribunal and unless it is, ex facie, apparent that the disputes are barred by limitation, the parties are required to be referred to arbitration** (See - *Vidya Drolia v. Durga Trading Corporation* : (2021) 2 SCC 1).

15. **This Court is also unable to readily accept that the claims made by the petitioner are barred by limitation.** It is clearly a contentious issue and it is not necessary for this Court to address the said issue in this proceeding as the same would be required to be considered by the Arbitral Tribunal.”

(Emphasis supplied)

11. Thus, in view of the law settled in **Grasim Industries Limited** (supra) and **Sagar Construction** (supra) the objection raised by the Respondent vis-à-vis 180 days is without any merit. Moreover, with respect to the objection of Article 55 of the Schedule to the Limitation Act after excluding the period from 01.03.2020 to 28.02.2022, prima facie it appears that the Petitioner’s claim is within limitation.

Second objection: Arbitrability of the claims raised are disputed

12. With respect to the second objection, it would be relevant to state that at the stage of Section 11(6) under the Act of 1996, the Court is only required to examine the prima facie existence of the arbitration agreement; and all disputes of maintainability, arbitrability and on merits are to be adjudicated by the arbitral tribunal. The Supreme Court in its recent judgments of **Cox &**



Kings Ltd. v. SAP India Pvt. Ltd. & Anr.⁴ and **SBI General Insurance Co. Ltd. v. Krish Spinning**⁵ has made this legal position clear and unambiguous. The Respondent will be at liberty to raise the issue of non-arbitrability as well as satisfaction before the learned Arbitrator.

Dispute between the parties referred to arbitration

13. Having regards to the aforesaid and considering that there is no dispute as to the existence of the Arbitration clause and the Petitioner has invoked the same, this Court is of the view that the disputes are liable to be referred to arbitration. Since the value of the claim is stated to be Rs. 70 lakhs and the issues arising are complex, therefore, it is deemed appropriate to appoint a Former District Judge as a Sole Arbitrator.

14. Accordingly, the disputes between the parties are referred to arbitration with the following directions:

- i. Mr. H.S. Sharma, District Judge (Retd.) (Mob. No. 9910384647; E-mail: hss21252@gmail.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The arbitration will be held under the aegis of the Delhi International Arbitration Centre ('DIAC') and the Rules of DIAC will apply to the arbitration proceedings.
- iii. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act before entering into the reference.
- iv. The Petitioner shall file its statement of claim within four (4) weeks as per the rules of DIAC.
- v. DIAC is directed to list the matter for a preliminary hearing on or before 31.07.2025 as per the convenience of learned Arbitrator.

15. The remuneration of the learned Arbitrator for the arbitration proceedings shall be fixed by the Arbitrator as per his discretion.

⁴ Arbitration Petition No. 38/2020 dated 09.09.2024

⁵ 2024 SCC OnLine SC 1754



16. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims and/or counter claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

17. With the aforesaid direction, the petition stands disposed of.

18. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

19. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and the learned Sole Arbitrator.

20. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant

APRIL 30, 2025/mt/ms

MANMEET PRITAM SINGH ARORA, J

[Click here to check corrigendum, if any](#)