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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 108/2024 & I.A. 1874/2024, I.A. 6978/2025

GPM ACID JV

.....Petitioner

Through: Mr. Joydeep Mazumdar, Mr. Prabhat
Sil, Ms. Upma Srivastava, Mr. Nishchaye Sharma,
Advs.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Shashang Garg, Sr. Adv. with Mr
Raghav Bhatia, Ms. Aradhana Chaturvedi, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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18.03.2025

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*"the Act"*) seeking for the appointment of an Arbitrator for adjudication of disputes between the parties.
2. The brief facts of the case are that the petitioner and the respondent executed a contract for Detailed Engineering and Project Management Consultant (*"DEPMC"*) for construction of residential accommodation for defence personnel at Binnaguri, Cooch Behar, Military Station (*"the project"*) vide agreement bearing CA No. DGMAP/PHASE-II/DEPMC/PKG-18 dated 20.05.2009 (*"the Contract"*).
3. The petitioner was appointed as the DEPMC for the project.
4. The date of commencement of work was 12.06.2009 and the building contractor had completed the work on 18.07.2016 and the defect



liability period got over on 17.07.2018.

5. The payment of the petitioner's bill at Stage-4 (95% of the payment conditions of the contract) was made on 16.10.2017.
6. However, for claiming the Stage-5 payment (remaining 5% of the payment conditions of the contract), the petitioner had been requesting the respondent for certain additional payments, i.e. payments for the increased cost of work from the unanticipated and unreasonable time over-run beyond the stipulated period of completion, which the respondent has refused to approve of and hence, the dispute arose between the parties.
7. Consequently, the petitioner addressed a letter dated 05.03.2018 detailing the amounts due and payable to the petitioner and paragraph 14 of the said letter reads as under:-

“14. Under the circumstances and as a last instant we appeal for amicable settlement of this ambiguity within the framework of the contract Agreement binding us, within 30 days of receipt of this letter failing which we would have no option but to consider the denial as dispute within the meaning of Article 17 of the Contract Agreement liable to be adjudicated through arbitration. And in such a case, we also reserve our right to claim the cost of arbitration.”

8. Since the amounts were not paid, the petitioner issued a legal notice dated 02.03.2023 and thereafter, filed the present petition on 28.09.2023.
9. Article 17 of the Contract contains the arbitration clause as under:-



“ARTICLE 17 SETTLEMENTS OF DISPUTES

All disputes, between the parties to the contract (other than those for which the decision of the DGMAP or any other person is by the contract expressed to be final and binding) shall, after written notice by earlier party to the Contract to the other of item, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/ Direct Final Examination of Sub Division II of Institution of Surveyors (India) recognised by the Govt. of India to be appointed by the Engineer-in-Chief, E-in-C's Branch, Kashmir House, New Delhi-11 or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under conditions of this contract.

Provided that in the event of abandonment of the works or cancellation of the Contract under conditions of this contract, such reference shall not take place until alternative arrangements have been finalized by the OWNER to get the works completed by or through any other consultant or consultants or Agency or agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Owner's right of recovery from the consultant as provided in conditions of



this contract.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator may proceed with the arbitration, ex parte, if either party, inspite of notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion.

The language of the arbitration proceedings and that of all documents any communications between the parties shall be “English”.

The award of the Arbitrator shall be final and binding on both the parties to the contract.

Notwithstanding the fact that the stations of work are anywhere in India, only the courts at Delhi/New Delhi shall have the jurisdiction to adjudicate and settle any disputes between OWNER and the consultant. No other court outside Delhi/New Delhi shall have any jurisdiction on any matter requiring reference to Civil Court.”

10. Mr. Mazumdar, learned counsel appearing on behalf of the petitioner, states that the entire claim is within the period of limitation and hence, the petition is maintainable.



11. Mr. Garg, learned senior counsel appearing on behalf of the respondent, opposes the petition on the ground of limitation in view of the paragraph 14 of the letter dated 05.03.2018 (reproduced above).
12. I have heard learned counsel for the parties and perused the material available on record.
13. In the present case, *vide* the letter dated 05.03.2018, the petitioner itself has quantified its claims as being due and payable by the respondent.
14. Additionally, in paragraph 14 of the said letter, the petitioner has clearly stated that in case the amounts are not paid, the petitioner would invoke the arbitration in terms of Article 17 of the Contract.
15. The Hon'ble Supreme Court in the case of ***B & T AG v. Union of India, (2024) 5 SCC 358***, has categorically held as under:-

“74. In Panchu Gopal Bose v. Port of Calcutta [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338] , this Court had held that the provisions of the 1963 Act would apply to arbitrations and notwithstanding any term in the contract to the contrary, cause of arbitration for the purpose of limitation shall be deemed to have accrued to the party, in respect of any such matter at the time when it should have accrued but for the contract. Cause of arbitration shall be deemed to have commenced when one party serves the notice on the other party requiring the appointment of an arbitrator. The question was when the cause of arbitration arises in the absence of issuance of a notice or omission to issue notice for a long time



after the contract was executed? Arbitration implies to charter out timeous commencement of arbitration availing of the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aids promptitude and resultant consequences. Defaulting party should bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. It was further held that where the arbitration agreement does not really exist or ceased to exist or where the dispute applies outside the scope of arbitration agreement allowing the claim, after a considerable lapse of time, would be a harassment to the opposite party. It was accordingly held in that case that since the petitioner slept over his rights for more than 10 years, by his conduct he allowed the arbitration to be barred by limitation and the Court would be justified in relieving the party from arbitration agreement under Sections 5 and 12(2)(b) of the Act. [See : State of Orissa v. Damodar Das [State of Orissa v. Damodar Das, (1996) 2 SCC 216].”

16. Additionally, in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, in paragraph 128, it has been categorically held as under:-

“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.”

17. On perusal, I am of the view that in the present case, the cause of action for initiating the arbitration was crystallised on 05.03.2018 as regards the following claims:
 - A. Claim No.1: Reimbursement of increased cost of work in the prolonged period;
 - B. Claim No.2: Claim for work done not paid arising from denial to include the payment made to contractor under the price escalation clause; and
 - C. Claim No.3: Claim for interest @ 18% per annum on the above claims from the date of occurrence to the date of actual payment.
18. Thus, the Section 11 petition should have been filed on or before



04.03.2021 as per the law of limitation. Even after adding the period of Covid-19 pandemic, the petition should have been filed on or before 17.02.2023.

19. Hence, in the present case, the claims are barred by limitation and cannot be referred to arbitration.
20. However, the petitioner is entitled to 0.5% of the settled fee after completion of the defect liability period of 2 years or submission of final report or settlement of all disputes with contractors in arbitration, whichever is later.
21. Since the disputes with the contractors are still pending, the 0.5% of the settled fee is within the period of limitation.
22. The learned senior counsel for the respondent, on instructions of the respondent, has no objection if the same is referred to the arbitrator.
23. For the said reasons, the issue of the entitlement of the petitioner to 0.5% of the settled fee is referred to the arbitration.
24. The petition is allowed and the following directions are issued:-
 - i) Ms. Justice Rekha Palli, (Retd. Judge Delhi High Court) (Mob. No. 9810012120) 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, Delhi High Court, Sher Shah Road, New Delhi (“DIAC”).
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the



reference.

- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned Arbitrator within three weeks from today.

25. The present petition is disposed of accordingly.

JASMEET SINGH, J

MARCH 18, 2025 / (MS)

Click here to check corrigendum, if any