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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.359 OF 2026

M/s. S. D. Bhatt ….Applicant.
Vs.
Hindustan Construction Company Ltd. …..Respondent.

Mr. Jash J. Dalia with Mr. Abdul Ali, Ms. Rashmi Upadhyay, Advocates for the Applicant.

Mr. Bhavik Lalan with Mr. Darshit Dave, Advocates for the Respondent.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 22nd OCTOBER 2026

P.C. :

1. The Applicant was engaged by the Respondent as a sub-contractor to execute certain civil and architectural works for the hydroelectric project at Kargil, Jammu and Kashmir, for the National Hydro Power Corporation. The engagement was under Work Order No. 14015024 dated 25 July 2011 (“Work Order”). Clause 32 of the Work Order contains the arbitration agreement.

2. Mr. Dalia, learned counsel for the Applicant, submits that although the Applicant completed the work, certain amounts remained

unpaid. The Respondent issued the Final Bill on 20th April 2013 and the same was signed by the Applicant. However, the signing of the bill did not resolve all outstanding claims. The Applicant repeatedly approached the Respondent and pursued the matter through correspondence dated 10th September, 2013, 15th October, 2013, 29th October, 2013, 25th July, 2014, 21st July, 2017 and 21st July, 2019 including a request for appointment of an arbitrator. The Applicant also filed a criminal compliant with the Vikhroli police station at Mumbai and initiated criminal proceedings before the Court of the Chief Judicial Magistrate at Kargil, which are stated to be pending. Despite this, the Respondent did not make payment and engaged in dilatory conduct to defeat the claim of the Applicant. Finally, on 4th November 2019, the Applicant invoked Clause 32 of the Work Order and called upon the Respondent to appoint an independent and impartial arbitrator. By letter dated 5th December 2019, the Respondent rejected that request. The Applicant thereafter filed Arbitration Petition No. 21 of 2021 before the High Court of Jammu and Kashmir and Ladakh at Jammu under Section 11(6) of the Arbitration and Conciliation Act, 1996. By an order dated 13th February 2026, that petition was dismissed for want of territorial jurisdiction, with liberty to approach the competent Court. The present

Application has been filed pursuant to that liberty.

3. Mr. Dalia submits that although the Applicant had signed No Claim Certificate on 20th April, 2013, the subsequent correspondence demonstrates that disputes continued to subsist. It is contended that whether the claims are barred by limitation or constitute dead claims ought to be decided by the arbitral tribunal. As regards the time taken to approach this Court, Mr. Dalia submits that the period during which the Applicant prosecuted the Section 11 proceedings before the Jammu and Kashmir High Court should be excluded under Section 14 of the Limitation Act, 1963. He submits that those proceedings were pursued bona fide and that the order dismissing them expressly granted liberty to approach the competent Court. The Applicant accordingly seeks appointment of a sole arbitrator for adjudication of disputes and differences that have arisen under the Work Order dated 25th July, 2011.

4. On the other hand, Mr. Lalan, learned counsel for the Respondent, opposes the Application on the ground that the claims are *ex facie* barred by limitation. The Petitioner has averred various facts and material documents in this Application. He submits that on 20th

April 2013, the Applicant accepted the final bill and executed an unconditional No Claim Certificate. On the same date, the Applicant also issued a letter on its own letterhead accepting the measurements, materials, requisitions and quality of the work and undertaking not to raise any objection thereafter. All payments were released by the Respondent on 23rd /24th April 2013. On 15th October 2013, the Applicant sought to dispute the amounts paid by the Respondent. But the objections were unequivocally rejected by the Respondent on 21st October 2013. Thus at the very latest, limitation for making claims started on 21st October 2013 and arbitration was not invoked within three years therefrom.

5. Mr. Lalan submits that the subsequent correspondence between 2013 and 2019 does not contain any acknowledgment of liability and cannot extend limitation. The Applicant pursued criminal complaints at Mumbai and at Kargil in an attempt to claim monies, but those proceedings are independent of a claim for reference to arbitration. Be that as it may, in 2016 itself, the claims of the Applicant are time barred, when arbitration was invoked on 4th November, 2019. Mr. Lalan relies upon the judgments in (i) ***Arif Azim Co. Ltd. vs. Aptech***

Ltd.[1]; (ii) ***Elfit Arabia and Another vs. Concept Hotel Barons Limited***[2]; and (iii) ***State of West Bengal and Others vs. B.B.M. Enterprises***[3] in support of his submissions.

6. I have heard the learned counsel for the parties and have perused the record. It is now well settled that at the stage of considering Section 11, referral Court is required to undertake limited examination as to the existence of a valid arbitration agreement. In the present matter, the existence of the arbitration agreement is not in dispute. The question is whether the claims are *ex facie* barred by limitation, so as to refuse reference to arbitration.

7. The documents dated 20th April 2013 are central to the issue. The Applicant signed the Abstract of Quantity for Full and Final bill and accepted the amounts stated therein. It also executed an unconditional No Claim Certificate on the Respondent's letterhead. Further, by a letter on its own letterhead, the Applicant accepted the measurements, materials, requisitions and quality of the work and undertook not to raise any objection in relation to the work. The

1 (2024) 5 SCC 313
2 2024 SCC OnLine SC 1739
3 2026 SCC OnLine SC 980

accounts were settled on that basis and the Respondent released all payments to the Applicant by 23rd/24th April 2013. The Applicant admits the above facts, but contends that amounts nevertheless remained due. In my view, the subsequent correspondence relied upon by the Applicant does not, by itself, extend the limitation period. The Applicant's own demands or requests cannot constitute an acknowledgment of liability by the Respondent. There is no contemporaneous document showing that the Respondent accepted or acknowledged any liability after the full and final settlement. The Applicant's attempt to dispute the settlement was rebutted on 21st October 2013 itself. In these circumstances, the correspondence addressed by the Applicant between 2013 - 2019 does not negate the settlement documents or establish a fresh starting point for limitation. The initiation or pendency of criminal proceedings does not alter this conclusion. As held by the Hon'ble Supreme Court in ***Elfit Arabia*** (supra), criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 and arbitration arise from distinct causes of action. The pursuit of one does not preserve or extend limitation for the other. The Applicant's complaints before the police or the criminal Court therefore does not keep its contractual claims alive for the purpose of invoking arbitration. The relevant portion of the said

judgment is quoted:

> "**5.** The respondents contend that the claims of the petitioner are barred by limitation and urge this Court to dismiss the petition. Whether a claim is barred by limitation lies ordinarily within the domain of the arbitral tribunal. However, a court exercising jurisdiction under Section 11(6) of the Act may reject ex facie non-arbitrable or dead claims, to protect the other party from being drawn into a protracted arbitration process [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313, para 68], that is bound to eventually fail. The court must 'cut the deadwood' by refraining from appointing an arbitrator when claims are ex facie time-barred and dead, or there is no subsisting dispute [Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1, para 154.4; BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 45.1.].
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> **6.** This examination does not involve a full review of contested facts but only a primary review, where uncontested facts speak for themselves [*NTPC Ltd.* v. *SPML Infra Ltd.*, (2023) 9 SCC 385, para 27.] Such limited scrutiny is necessary as it is the duty of the court to protect the parties from being compelled to arbitrate when the claim is demonstrably barred by limitation. If courts do not intervene within this limited compass and mechanically refer every dispute to arbitration, it may undermine the effectiveness of the arbitration process itself. *Ibid*, [para 28.]
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> ……...
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> **8.** Having regard to the uncontested chronology of events detailed in paragraphs 1 to 4 above, it is abundantly clear that the notices invoking arbitration dated 4 July 2022 and 27 October 2022 were issued eleven years after the cause of action arose in 2011 [Section 21, Arbitration and Conciliation Act, 1996.]. This is well beyond the limitation period of three years, [Section 46(1), Arbitration and Conciliation Act, 1996; Article 55 of the Schedule, Limitation Act, 1963.] and the claim which is sought to be raised is hopelessly barred by limitation.
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> **9.** The initiation of arbitration and criminal proceedings under

> Section 138 of the Negotiable Instruments Act 1881 are separate and independent proceedings that arise from two separate causes of action [*Sri Krishna Agencies* v. *State of A.P.*, (2009) 1 SCC 69, para 7.].Therefore, the institution of the proceedings under Section 138 does not imply a 'continuing cause of action' for the purpose of initiating arbitration, as erroneously contended by the petitioner."

8. The principle in the subsequent decision in ***State of West Bengal*** (supra) similarly supports declining a reference where the bar of limitation is apparent and no substantial evidentiary inquiry is required. Applying that limited scrutiny here, the Applicant's claim, on its own case, arose when the full and final settlement recorded on 20th April 2013. The applicable period of limitation for enforcing the contractual/money claim was three years. Yet the Applicant invoked arbitration only on 4th November 2019, i.e, more than six and a half years after the settlement. In my view, the Applicant claims were *ex facie* time-barred when it invoked arbitration. The Respondent cannot be compelled to undergo an arbitral process and incur unnecessary costs over time-barred claims. Lastly, the Applicant's reliance on Section 14 of the Limitation Act does not assist its case. The order dated 13th February 2026 passed by the Jammu and Kashmir High Court granting liberty to approach the competent Court does not determine the merits of the claim or revive a claim that had already become barred by limitation.

9. For all the aforesaid reasons, Commercial Arbitration Application No.359 of 2026 is dismissed.

10. There shall be no order as to costs.

[GAUTAM A. ANKHAD, J.]