(2026:HHC:47539)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.197 of 2025
Reserved on: 16.10.2026
Pronounced on: 30.10.2026
Uploaded on: 30.10.2026

Girish Gupta **.....Petitioner**

Versus

HPSEBL and Others **…..Respondents**

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
Whether approved for reporting?

For the petitioner: Mr. Rakesh Manta and Mr. Aryan Manta, Advocates.

For the respondents: Mr. Sourabh Chand, Advocate, for Ms. Vandana Misra, Advocate**.**

G.S. Sandhawalia, Chief Justice.

The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an Arbitrator. The Contract in question was for the work namely, "Construction of Type-II quarters 6 No's set at Keleston (Bharari), Shimla-I". The said Contract, amounting to Rs.18,70,708/-, was awarded to the petitioner by the Executive Engineer, Shimla (Electric), Division No.II, HPSEBL, Kasumpti Shimla, Himachal Pradesh, vide letter dated 23.06.2000 **(Annexure P-1).** Subsequently, the parties

entered into an agreement containing the arbitration clause on the basis of which this petition has been filed.

2. As per the agreement **(Annexure P-2),** the stipulated period for completion of the project was nine months, making the due date 07.04.2001, however, the actual date of completion of the project was 15.06.2006. The last payment of Rs.3,94,522/- was received from the respondents by the petitioner on 27.12.2015.

3. Apparently, communications were exchanged between the parties regarding the payment of the balance amount, as evidenced by letters dated 26.12.2017 **(Annexure P-3),** 27.12.2017 **(Annexure P-4),** and 28.12.2017 **(Annexure P-5).** Resultantly, the matter was referred to the Additional Superintending Engineer, Electrical Division No.II, HPSEBL, Shimla, by the Deputy Chief Engineer, Operation Circle, HPSEBL, Kasumpti Shimla, vide communications dated 05.01.2018 **(Annexure P-6)** and 09.01.2018 **(Annexure P-7).**

4. On 05.05.2020 **(Annexure P-9 colly),** the price escalation bill amounting to Rs.4,12,736/- was raised by the petitioner and forwarded to the Additional Superintending Engineer, Shimla (E) Division No.II, HPSEBL, Shimla. Thereafter, after a period of almost two years, the petitioner issued a notice dated 01.07.2022 **(Annexure P-10)** for appointment of a sole arbitrator.

This notice informed the respondents that if they failed to appoint a sole arbitrator in accordance with the provisions of 'the Act', the petitioner would proceed in accordance with the law. The matter was subsequently referred within the official respondents' department on 13.07.2022 **(Annexure P-11),** but no arbitrator was appointed, ultimately leading to the filing of the present petition on 24.06.2025.

5. The respondents have raised an objection as to limitation, contending that the claim is barred by the three-year period running from the accrual of the cause of action. While placing reliance upon the judgments of the Apex Court in ***Bharat Sanchar Nigam Limited and Another Vs. M/s. Nortel Networks India Private Limited (2021) 5 SCC 738*** and ***Obulapuram Mining Co. Private Limited v. JSW Steel Limited (AIR Online 2019 BOM 2053),*** and following ***State of Himachal Pradesh & Another Vs. M/s Himachal Techno Engineers & Another (2010) 12 SCC 210,*** they have opposed the appointment of the Arbitrator.

6. It is stated that vide letters dated 24.08.2011 and 06.09.2012, the petitioner was requested to attend the office to settle their grievances, but failed to do so **(Annexure R-A/I colly).** It is further stated that the actual work was completed by the petitioner on 15.05.2006, which is after a lapse of five years from the original completion period and eight months beyond the last granted

extension. Clauses 10C and 10CC of the agreement were applicable only, if the work was executed within the stipulated period.

7. Reliance is also placed upon the judgment of the Apex Court in ***M/s Pandit Munshi Ram & Associates Vs. Delhi Development Authority (AIR 2001 Delhi 82),*** wherein it has been held that once the final bill is prepared and paid, and the contractor accepts the same without protest, no further claim survives.

8. The final bill and receipts of the payments were attached as **(Annexure RA-3 colly).** Because the final payment was made on 27.12.2015, it is pleaded that stale claims could not be entertained and the limitation period could not be extended indefinitely. The cause of action arose way back in the year 2015, when the payments had already been released to the petitioner.

9. In the replication filed by the petitioner, the plea was taken that the respondents were not bothered to make the legitimate payments to the petitioner. Resultantly, the claim was within limitation.

10. A perusal of the above facts would go on to show that, after receiving the last payment on 27.12.2015, the petitioner did nothing except filing representations and seeking the release of final bills and securities in the year 2017. The petitioner took no positive steps to invoke the arbitration clause and invoke the jurisdiction of

the Court. Merely because there was some *inter se* correspondence in the year 2018 does not revive the cause of action. Furthermore, the claim was made for the first time thereafter on 05.05.2020, which could not revive a dying right. Serving a notice under Section 21 of the 'the Act, 1996' on 01.07.2022 **(Annexure P-10)** cannot resurrect a dead cause of action on behalf of the petitioner. The Apex Court has time and again held that dead causes must be weeded out, and old, stale claims cannot be permitted or agitated merely on account of filing representations.

11. The said view has been consistently followed in the judgment passed by the Apex Court in ***Bharat Sanchar Nigam Limited and Another Vs. M/s. Nortel Networks India Private Limited*** *(supra)* and also in ***Civil Appeal No. 4320 of 2026,*** titled as ***State of West Bengal and Others Vs. M/s. B.B.M. Enterprises,*** dated 09.04.2026, wherein the order of the High Court which had restored a dead dispute after a period of twenty years was set aside.

12. Reliance can also be placed upon the judgment passed by the undersigned in ***Arb. Case No.167 of 2025,*** titled as ***Shashi Sharma Vs. The State of Himachal Pradesh and Others*** on 03.07.2026. In that case, notice was issued five and a half years after the cause of action arose, long after the dispute had died, as the contractor had done nothing for eight years. It was held therein

that merely serving a notice on 22.03.2024 to claim an outstanding amount or raise a bill would not give a fresh cause of action to the petitioner.

13. In ***Arbitration Petition (C) No.13 of 2023,*** titled as ***M/s B and T AG Vs. Ministry of Defence,*** decided on 18.05.2023, a similar issue concerning the appointment of Arbitrator arose before the Apex Court. The encashment of the warranty bond had taken place on 16.02.2016 and thereafter, the parties apparently remained in discussions. The petitioner requested the respondents to review the wrongful imposition of the 8 liquidated damages on 04.09.2019 and a notice of the arbitration was sent by the petitioner on 08.11.2021. The said notice was held to have been sent after a period of more than five years, far beyond the limitation period of three years. Resultantly, it was held that the 'Breaking Point' should be treated as the date on which the cause of action arose for the purpose of limitation, which was the encashment of the bank guarantee. It was held that the entire history of the case has to be seen and whether a party has abandoned efforts at arriving at a settlement. It was was accordingly held that it is not open to a party to sit tight and not file an application for settlement of a dispute within the time prescribed by the Limitation Act and allow his right to be extinguished by the lapse of time and thereafter to assert a cause of

action to file an application under Section 11 of the Act for establishment of his right, which is not alive. The relevant paragraphs of the said judgment read as under:-

> *“62. At the cost of repetition, we state that when the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the Government account that was the end of the matter. This "Breaking Point should be treated as the date at which the cause of action arose for the purpose of limitation.*
>
> *63. Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the "cause of action" for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating.”*

14. Resultantly, this Court is of the considered opinion that the project work, which was awarded in the year 2000 with a nine-month completion timeline and had been completed in the year 2006, cannot revive a dead cause of action and also because the last payment was made on 27.12.2015. The necessary notice had to be served within a period of three years from that final payment, which the petitioner has failed to do. Filing a petition for the appointment of an arbitrator after ten years after receiving the final payment cannot revive a claim barred by limitation.

15. Resultantly, the present petition is dismissed on the grounds of delay and laches. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

30th October, 2026
(Munish Thakur)