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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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ARB-629-2024
Date of decision: 21.04.2025

GURTEJ SINGH

....APPLICANT

Vs.

PUNJAB STATE POWER CORPORATION LTD. AND ANR.

...RESPONDENTS

ARB-630-2024

GURTEJ SINGH

....APPLICANT

Vs.

PUNJAB STATE POWER CORPORATION LTD. AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Lajpat Rai Sharma, Advocate
for the applicant.

Mr. R.P.S. Bara, Advocate
for the respondents-PSPCL.

JAGMOHAN BANSAL, J (ORAL)

1. By this common order, above-said applications are being disposed of since issues involved in both the applications and prayer sought therein are common. With the consent of parties and for the sake of brevity, facts are borrowed from ARB-629-2024.

2. The applicant through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") is seeking appointment of an Arbitrator to adjudicate the dispute between the parties.



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3. The applicant pursuant to notice applied for the allotment of work. He was allotted work vide letter dated 31.10.2017 (Annexure P-1). Work could not be commenced and applicant vide communication dated 14.02.2019 expressed his inability to work and requested for refund of his earnest money. He specifically pointed out that rates of material have increased so he cannot perform these contracts. The applicant vide communication dated 12.08.2024 (Annexure P-3) and 30.08.2024 (Annexure P-4) requested the respondents to refund his security along with damages on account of withdrawal of work.

4. Mr. Lajpat Rai Sharma, Advocate submits that as per conditions of contract, matter needs to be referred to Arbitrator. The petitioner has suffered loss on account of inaction on the part of respondents.

5. *Per contra*, Mr. R.P.S. Bara, Advocate submits that it is factually incorrect that earnest money was not refunded by 2024. The respondent vide NEFT dated 28.06.2023 refunded a sum of Rs. 1,29,094/- which was earnest money of applicant qua both the contracts. The applicant without demur withdrew his consent for the execution of contract and requested for refund of earnest money. At that stage, he did not point out that he has suffered loss whereas his claim was that cost of material has increased so he cannot perform the contract.

6. I have heard arguments of both sides and with the able assistance of learned counsel perused the record.

7. A Seven-Judge Bench of Supreme Court in ***SBP & Co. v. Patel Engg. Ltd. (2005) 8 SCC 618*** has held that the issue of limitation being one of threshold importance, it must be decided at the pre-reference stage so that the



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other party is not dragged through a long-drawn arbitration which would be expensive and time consuming.

8. Having held that Article 137 of Limitation Act is applicable to proceedings under Section 11(6) of 1996 Act, the Supreme Court in *Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313*; *BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738* and *B&T AG v. Union of India, (2024) 5 SCC 358* has held that though limitation is an admissibility issue, yet it is duty of the Courts to *prime facie* examine and reject non-arbitrable or dead claims so as to protect the other party from being drawn into a time consuming and costly arbitration process. While considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a two-pronged test-first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation and secondly, whether the claims sought to be arbitrated are *ex facie* dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of dispute to arbitration, the Court may refuse to appoint an Arbitral Tribunal. There are three principles of law regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It is important to find out the “breaking point” at which any reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral



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of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced. A notice invoking arbitration after six years from the cause of action is barred by limitation. The claim after six years is *ex-facie* dead and time barred. The period of limitation for issuing notice of arbitration would not extend by mere exchange of letters or settlement discussions where a final bill is rejected by making deductions or otherwise.

9. From the perusal of record, it is evident that contract was executed in 2017 and work never started. The applicant withdrew its consent to execute the work vide communication dated 14.02.2019. The respondent refunded earnest money on 28.06.2023. Consent to execute the work was withdrawn on 14.02.2019 whereas notice claiming damages was issued in August' 2024. There was gap of more than 5 years. Appointment of Arbitrator would drag the respondent to undesired and costly litigation. Respondent is a government instrumentality. There would be burden on public exchequer. The applicant wants to rekindle dead claims.

10. In the backdrop, this Court is of the considered opinion that both the applications deserve to be dismissed and accordingly dismissed.

21.04.2025
 manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No