



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

265

ARB-7-2022 (O&M)

Date of Decision: 14.10.2024

Bhagwan Dass and Sons**...Applicant**

Versus

Union of India and others**...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: - Mr. S.K.S. Bedi, Advocate for the applicant

Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

2. The applicant and respondent entered into a works contract. The value of the contract was ₹52.45 Lakhs. The date of commencement of work was 25.02.2008 and it was to be completed by 24.08.2008. The date of completion of contract was extended to 01.09.2010 and by said date, the applicant completed the work. The respondent prepared final bill dated 30.04.2011 which was signed by the applicant towards full and final payment. The applicant also signed no claim certificate which reads as under:-

“It is certified that I have prepared this Final bill for claiming entire payment due to me from this Contract



Agreement. This Final Bill including all claims raised by me from time to time. I am irrespective of the fact whether any are admitted/accepted by the department or not. I now categorically certify that I have no more claims in respect of the contract beyond the these already included in that this Final Bill by me and shall be in full old Final Bill satisfaction of all my claims under the Contract Agreement.”

The applicant served notice upon the respondent on 20.03.2021 seeking appointment of an Arbitrator.

3. Learned counsel for the respondents pointing out Para 5 of the application submits that claim relates to 2011-12 and the amount claimed by the applicant is ₹2,89,467/-. There is no question of settlement between the parties because the claim made by the applicant is hopelessly barred by limitation. It is a dead claim and the applicant through arbitration proceedings wants to rekindle a dead claim.

4. Learned counsel for the applicant submits that there is undisputedly an arbitration agreement and the question of limitation may be left for adjudication by the Arbitral Tribunal.

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

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



7. 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 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.

8. In the case in hand, the dispute relates to 2011-12. The work was completed on 01.09.2010 and thereafter, final bill was prepared on 30.04.2011. The applicant issued no further claim certificate on 06.08.2011. Notice invoking arbitration clause was issued on 22.03.2021. In view of afore-cited judgments of the Supreme Court, this Court finds that demand notice was served in 2021 with respect to a claim which on the said date was hopelessly barred by limitation and had become dead wood.

9. In the backdrop, this Court is of the considered opinion that present application deserves to be dismissed and accordingly dismissed.

10. Pending application(s), if any, shall also stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.10.2024

Mohit Kumar

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