IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-122-2017 (O&M)
Date of decision:- 08.07.2022

M/s Garg Construction Company

...Applicant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE

Present:- Mr. Vivek Khatri, Advocate,
for the applicant.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

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RAVI SHANKER JHA, C.J. (ORAL)

This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short the Act) seeking appointment of an arbitrator has been filed by the applicant on 28.04.2017.

The claim is based on the fact that the applicant entered into an agreement with the respondents on 23.04.2004 for widening and strengthening on Dabwali Kalanwali via Desujodha Road K.M. 0.00 to 35.10 in Sirsa District. The work was to be completed within a period of twelve months, whereas it was completed on 31.05.2007. A dispute arose between the parties on account of the fact that an inquiry by the State Vigilance Bureau was conducted in respect of certain issues and, therefore, payment of the applicant was withheld. The applicant thereafter filed an application seeking appointment of an arbitrator by issuing a legal notice to the respondents on 11.04.2011 (Annexure P-3) pursuant to which the respondents sent a letter dated 28.04.2011 (Annexure R-1) asking the applicant to deposit 10% of the claim amount immediately well before the limitation period so that the arbitrator could be appointed. The communication clearly stated that in case the applicant failed to deposit the claim amount well before the limitation period, it would be responsible for the delay. Thereafter, several correspondences took place between the parties and the respondents continued to reiterate their stand on the deposit of 10% of the claim amount which was admittedly not deposited by the applicant. Ultimately, the applicant filed this application under Section 11 of the Act before this Court on 28.04.2017.

The preliminary objection raised by the respondents is that the application filed by the applicant seeking appointment of an arbitrator is barred by limitation on account of delay and laches and, therefore, deserves to be dismissed.

Learned counsel for the applicant in support of his submission that the application is not barred by limitation has relied upon the decision of the Supreme Court rendered in the case of *M/s Mayavti Trading Pvt. Ltd. Vs Pradyuat Deb Burman,* 2019 (8) SCC 714 to contend that the question of staleness of the claim or as to whether the claim made in the arbitration proceeding is barred by limitation or not cannot be or should not be decided in Section 11 proceedings and the said issue should be left to be decided by the arbitrator. It is contended that the issue in Section 11 proceedings is confined only to the extent of an arbitration agreement and for appointing an arbitrator. It is submitted that in such circumstances, the preliminary objection regarding delay and laches raised by the respondents deserves to be rejected and in terms of the arbitration clause, the arbitrator should be appointed. It is further submitted that the letter dated 28.04.2011 (Annexure R-1) sent by the respondents regarding deposit of 10% of the claim amount is also untenable in view of the law laid down by the Supreme Court in the case of *M/s ICOMM Tele Ltd. Vs Punjab State Water Supply & Sewerage Board and another,* 2019 (4) SCC 401.

Learned State counsel, appearing for the respondents, per contra has relied upon the decision of the Supreme Court rendered in *Secunderabad Cantonment Board Vs M/s B. Ramachandraiah & Sons,* 2021 (5) SCC 705 and *Bharat Sanchar Nigam Ltd. Vs M/s Nortel Networks India Pvt. Ltd.,* 2021 (5) SCC 738 to contend that the issue involved in the present application is not regarding staleness of the claim, but as to whether the application under Section 11(6) is barred by limitation on account of delay and laches and as the Section 11(6) application is barred by limitation, it be dismissed.

I have heard the learned counsel for the parties at length. Evidently, the issue involved in the present case is as to whether the present application is barred by limitation. The law in that respect has been summarized by the Supreme Court in the case of *Secunderabad Cantonment Board* (supra), wherein the Supreme Court has held as under:-

> 14. Having heard the learned counsel appearing for both parties, it is first necessary to refer to the recent judgment of this Court in Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd. [Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan

Nigam Ltd., (2020) 14 SCC 643], which extracts passages from all the earlier relevant judgments, and then lays down as to when time begins to run for the purpose of filing an application under Section 11 of the Arbitration Act. This Court, after referring to the relevant statutory provisions, held: (SCC pp. 649-52, paras 15, 21, 23-24 & 29)

> "15. In Damodar Das [State of Orissa v. Damodar Das, (1996) 2 SCC 216], this Court observed, relying upon Russell on Arbitration by Anthony Walton (19th Edn.) at pp. 4-5 and an earlier decision of a two-Judge Bench in Panchu Gopal Bose v. Port of Calcutta [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338], that the period of limitation for an application for appointment of arbitrator under Sections 8 and 20 of the 1940 Act commences on the date on which the "cause of arbitration" accrued i.e. from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.
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> 21. Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court [Geo Miller & Co. v. Rajasthan Vidyut Utpadan Nigam Ltd., 2007 SCC OnLine Raj 97 : (2008) 1 RLW 429] that the appellant's cause of action in respect of Arbitration Applications Nos. 25/2003 and 27/2003, relating to the work orders dated 7-10-1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation. Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose i.e. 8-2-1986. Similarly, with respect to Arbitration Application No. 28/2003 relating to the work order dated 3-5-1985, the respondent has stated that final bill was handed over and became due on 10-8-1989. This has not been disputed by the appellant. Hence the limitation period ended on 10-8-1992. Since the appellant served notice for appointment of arbitrator in 2002, and requested the appointment of an arbitrator before a court only by the end of 2003, his claim is clearly barred by limitation.
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> 23. Turning to the other decisions, it is true that in Inder Singh Rekhi [Inder Singh Rekhi v. DDA, (1988) 2 SCC 338] , this Court observed that the existence of a dispute is essential for appointment of an arbitrator. A dispute arises when a claim is asserted by one party and denied by the other. The term "dispute" entails a positive element and mere inaction to pay does not lead to the inference that dispute exists. In that case, since the respondent failed to finalise the bills due to the applicant, this Court held that cause of action would be treated as arising not from the date on which the payment became due, but on the date when the applicant first wrote to the respondent requesting finalisation of the bills. However, the Court also

> expressly observed that 'a party cannot postpone the accrual of cause of action by writing reminders or sending reminders'.
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> 24. In the present case, the appellant has not disputed the High Court's finding [Geo Miller & Co. v. Rajasthan Vidyut Utpadan Nigam Ltd., 2007 SCC OnLine Raj 97 : (2008) 1 RLW 429] that the appellant itself had handed over the final bill to the respondent on 8-2-1983. Hence, the holding in Inder Singh Rekhi [Inder Singh Rekhi v. DDA, (1988) 2 SCC 338] will not apply, as in that case, the applicant's claim was delayed on account of the respondent's failure to finalise the bills. Therefore the right to apply in the present case accrued from the date on which the final bill was raised (see Union of India v. Momin Construction Co. [Union of India v. Momin Construction Co., (1997) 9 SCC 97]).
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> 29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."
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> (emphasis in original)

15. The recent judgment of this Court in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738] , delivered on 10-3-2021 in Civil Appeals Nos. 843-844 of 2021 has also considered the entire law on the subject. The first paragraph of the said judgment reads as follows: (SCC p. 747, para 1)

> "1. … The present appeals raise two important issues for our consideration: (i) the period of limitation for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"); and (ii) whether the Court may refuse to make the reference under Section 11 where the claims are ex facie time-barred?"

16. Insofar as the first issue is concerned, after examining Article 137 of the Limitation Act, this Court held: [Nortel Networks (India) (P) Ltd. case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738] , SCC pp. 751-52, paras 15-16]

> "15. It is now fairly well settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.*

16. The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator. This position was recognised even under Section 20 of the Arbitration Act, 1940. Reference may be made to the judgment of this Court in J.C. Budhraja v. Orissa Mining Corpn. Ltd. [J.C. Budhraja v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] wherein it was held that Section 37(3) of the 1940 Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other party, a notice requiring the appointment of an arbitrator. Para 26 of this judgment reads as follows: (SCC p. 460)

> '26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in Inder Singh Rekhi v. DDA [Inder Singh Rekhi v. DDA, (1988) 2 SCC 338] , Panchu Gopal Bose v. Port of Calcutta [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338] and Utkal Commercial Corpn. v. Central Coal Fields Ltd. [Utkal Commercial Corpn. v. Central Coal Fields Ltd., (1999) 2 SCC 571] also make this position clear.'"

17. Insofar as the second issue is concerned, this Court went into the position prior to the Arbitration and Conciliation (Amendment) Act, 2015 ["the 2015 Amendment"] together with the change made by the introduction of Section 11(6-A) by the 2015 Amendment, stating: [Nortel Networks (India) (P) Ltd. case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738] , SCC pp. 759-61, paras 31-34]

"31. Sub-section (6-A) came up for consideration in Duro Felguera S.A. v. Gangavaram Port Ltd. [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , wherein this Court held that the legislative policy was to minimise judicial intervention at the appointment stage. In an application under Section 11, the Court should only look into the existence of the arbitration agreement, before making the reference. Post the 2015 Amendment, all that the courts are required to examine is whether an arbitration agreement is in existence — nothing more, nothing less: (SCC pp. 759 & 765, paras 48 & 59)

> '48. Section 11(6-A) added by the 2015 Amendment, reads as follows:
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> > "11. (6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement."
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> From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.
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> 59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.'

32. In Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] , a three-Judge Bench held that the scope of power of the Court under Section 11 (6-A) had to be construed in the

narrow sense. In para 10, it was opined as under: (SCC pp. 724-25)

> '10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785] , as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera S.A. [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] ….'

33. In Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] this Court took note of the recommendations of the Law Commission in its 246th Report, the relevant extract of which reads as: (SCC p. 460, para 7)

> '7.6. The Law Commission in the 246th Report [Amendments to the Arbitration and Conciliation Act, 1996, Report No. 246, Law Commission of India (August 2014), p. 20.] recommended that:
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> > "33. … the Commission has recommended amendments to Sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the court/judicial authority finds that the arbitration agreement does not exist or is null and void. Insofar as the nature of intervention is concerned, it is recommended that in the event the court/judicial authority is prima facie satisfied against the argument challenging the arbitration agreement, it *shall* appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the Arbitral Tribunal." '

> 34. In view of the legislative mandate contained in the amended Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which enshrines the kompetenz-komptenz principle. The doctrine of kompetenz-komptenz implies that the Arbitral Tribunal is empowered, and has the competence to rule on its own jurisdiction, including determination of all jurisdictional issues. This was intended to minimise judicial intervention at the pre-reference stage, so that the arbitral process is not thwarted at the threshold when a preliminary objection is raised by the parties."
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> (emphasis in original)

18. This Court went on to hold that limitation is not a jurisdictional issue but is an admissibility issue. It then referred to a recent judgment of this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , and stated as follows: (Nortel Networks case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738] , SCC pp. 763-66, paras 45-47)

> "45. In a recent judgment delivered by a three-Judge Bench in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , on the scope of power under Sections 8 and 11, it has been held that the Court must undertake a primary first review to weed out 'manifestly ex facie non-existent and invalid arbitration agreements, or non-arbitrable disputes'. The prima facie review at the reference stage is to cut the deadwood, where dismissal is barefaced and pellucid, and when on the facts and law, the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration agreement exists, or that the subject-matter is not arbitrable, that reference may be refused.
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> 45.1. In para 144, the Court observed that the judgment in Mayavati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] had rightly held that the judgment in Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] had been legislatively overruled. Para 144 reads as: (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC pp. 114-15)
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> > '144. As observed earlier, Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] explains and holds that Sections 8 and 11 are complementary in nature as both relate to reference to arbitration. Section 8 applies when judicial proceeding is pending and an application is filed for stay of judicial proceeding and for reference to arbitration. Amendments to Section 8 vide Act 3 of

> 2016 have not been omitted. Section 11 covers the situation where the parties approach a court for appointment of an arbitrator. Mayavati Trading (P) Ltd. [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] , in our humble opinion, rightly holds that Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] has been legislatively overruled and hence would not apply even post omission of sub-section (6-A) to Section 11 of the Arbitration Act. Mayavati Trading (P) Ltd. [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] has elaborated upon the object and purposes and history of the amendment to Section 11, with reference to sub-section (6-A) to elucidate that the section, as originally enacted, was facsimile with Article 11 of the UNCITRAL Model of law of arbitration on which the Arbitration Act was drafted and enacted.'

While exercising jurisdiction under Section 11 as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute. Para 148 of the judgment reads as follows: (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC p. 119)

> '148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Fili Shipping Co. Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 Bus LR 1719 : 2007 UKHL 40] , it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the

> contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.'

45.2. In para 154.4, it has been concluded that: (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC p. 121)

> '154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.'

45.3. In para 244.4 it was concluded that: (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC p. 162)

> '244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. "**when in doubt, do refer**".'

46. The upshot of the judgment in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is affirmation of the position of law expounded in Duro Felguera [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] and Mayavati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] , which continue to hold the field. It must be understood clearly that Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] has not resurrected the pre-amendment position on the scope of power as held in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]

47. It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the

> disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal."
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> (emphasis in original)

On the basis of the aforesaid analysis, the Supreme Court recorded its conclusion in paragraph 19 which reads as follows:-

> "19. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006. This demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007. The appellant's laconic letter dated 23-1-2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day. Obviously, once time has started running, any final rejection by the appellant by its letter dated 10-11-2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2020. On this count, the applications under Section 11 of the Arbitration Act, themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court."

In view of the aforesaid law laid down by the Supreme Court, it is evident that in the present case the dispute between the parties arose in the year 2007, whereafter the applicant for the first time sent a legal notice to the respondents for the appointment of an arbitrator on 11.04.2011, whereupon the respondents responded by their letter dated 28.04.2011 asking the applicant to deposit the necessary 10% of the claim amount failing which it would be responsible for the delay and, therefore, deserves to be dismissed, as evidently, the limitation as far as filing of the application under Section 11 of the Act is

concerned would start running from that date and, therefore, the present application filed by the applicant before this Court on 28.04.2017 is apparently delayed and barred by limitation, as it has been filed well beyond three years, in view of the law laid down by the Supreme Court in *Secunderabad Cantonment Board's* as well as *Bharat Sanchar Nigam Ltd.'s* cases (supra).

The application, accordingly, stands dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

08.07.2022
Amodh Sharma

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