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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 24<sup>th</sup> April, 2025**

+ **FAO 247/2015 & CM APPL. 14313/2015**

**ANIL BHATIA** .....Appellant

Through: **Mr. R. Krishnaamorthi, Adv.**

versus

**N B C C LTD & ANR** .....Respondents

Through: **Mr. Tushar Sannu and Ms. Ankita Sannu, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J. (ORAL)**

1. Having heard the learned counsels for the parties and on perusal of the record, this Court has no hesitation in holding that the present petition under Section 37 of the Arbitration and Conciliation Act, 1996<sup>1</sup> filed by the appellant assailing the impugned judgment dated 18.11.2014 passed by the learned District and Session Judge, South-East, Saket Courts, New Delhi, whereby the appeal under section 34 of the A.C. Act was dismissed for being bereft of any merits.

2. In a nutshell, the appellant was awarded a work contract by the respondent for fixing of Dash fasteners at the Central Board of Secondary Education<sup>2</sup> building at Preet Vihar, in terms of the tender notice dated 01.10.1999, for a sum of Rs. 9 lakhs, to which response dated 12.10.1999 was filed by the appellant and the terms and

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<sup>1</sup> A.C. Act

<sup>2</sup> CBSE



conditions of the work contract were formulized and the appellant agreed to charge 2% for barricading, Labour and Security Man instead of 5% on the total cost of the work since CBSE was an educational institution. It was also negotiated by the appellant that the Running Bill will be paid to him within seven days by the respondent No.1 after receipt of bill amount from CBSE, and thereafter, the final bill shall be submitted within 15 days of such Running Bill.

3. The grievance of the appellant was that despite receiving payment towards the Running Bill from CBSE to the tune of Rs. 4,05,045/-, the respondent No.1 did not pay the same to him despite repeated letters, reminders and personal visits. It is asserted that 90% of the work had been completed by the appellant by 31.05.2000 and only by virtue of RTI/reply dated 18.09.2006 came to know that out of Running Bill of Rs. 6,92,000/-, only Rs. 4,05,045/- was released.

4. It is pertinent to mention that the arbitration clause was invoked on 20.05.2010 and the learned Arbitrator *vide* impugned award dated 06.08.2013 dismissed the claim of the appellant/claimant towards the payment of certain works performed by him including refund of Earnest Money Deposit [‘EMD’] and liquidated damages primarily on the ground that the claim raised by the appellant/claimant was barred by limitation.

5. Suffice to state that the learned Arbitrator referred to the provisions of Section 43(1) of the A.C. Act as well as Section 3(1) read with Articles 18 and 55, 113 of the Limitation Act, 1963<sup>3</sup> and

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<sup>3</sup> "Section 43 (1) - The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court."



found that all the claims raised by the appellant/claimant were hopelessly time barred, who had slept over his legal rights for almost seven years.

6. The impugned award dated 06.08.2013 was assailed in the proceeding under Section 34 of the A.C. Act, primarily on two grounds that the learned Arbitrator on having being superannuated, could not have continued as an Arbitrator and the claim was not barred by the limitation. Both the objections were dismissed by the learned District and Session Judge, South-East District, Saket Courts, New Delhi, *vide* order dated 18.11.2014 which is assailed in the present case.

7. At this juncture, it would be apposite to reproduce the relevant observations made by the learned Arbitrator whereby the claim was held to be time barred:-

**8.3** Now question arises when the right to suit / claim does had arisen in the case in hand.

In the present case as per the terms of contract, the payments of the

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As per Section 3 (1) of the Limitation Act;

"Section 3 (1) - Subject to the provision contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made, after the prescribed period shall be dismissed although limitation has not been set up as a defence."

"Article 18 - For the price of work done by the plaintiff to the defendant at his request, where no time has been fixed by payment - Three years - When the work is done,"

"Article 55 - For the Compensation for the' breach of any contract, express or implied not herein specifically provided for – Three years - When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases."

"Article 113 - Any suit for which no period of limitation is prescribed elsewhere in this Schedule - Three years – When the right to sue accrues."



R.A. Bills were to be made within 7 days of receipt of the payment by Respondent, from the client. The terms of the payment under the contract has been placed by claimant as (Annexure C-5), which is reproduced herein:

**"Para 3: My Running bill may please be paid to me within 7 days after receipt of the bill amount from CBSE and final bill in 15 days."**

It, is not in dispute that the Respondent had received payment from the client, CBSE on 24.08.2000. As such the cause of action arose in favour of the Claimant, on 31.8.2000 i.e. after 7 days after the payment had been received by the Respondent and nonpayment thereof to the Claimant. The Claimant therefore became entitled to raise the dispute and invoke arbitration within 3 years from 31.8.2000 i.e. on or before 31.8.2003.

**8.4** The Claimant has stated the limitation will start to run only from the date when they came to know about the release of payment by the client, which is on 08.6.2007. But it is not factually correct as it is established from Claimant's; own letter dated 17.9.2002 wherein they have categorically stated that '**CBSE had released Rs. 3.5 lacs for this work long time back**'. Since the Claimant had knowledge of about the release of payment by the CBSE on 17.9.2002 and payment was not, released to the Claimant in terms of the agreement, the cause, of action for the purpose of limitation have arisen at best on 17.9.2002, when the Claimant has the knowledge of release of Rs. 3.5 lacs from CBSE and claims ought to have been filed by 17.9.2005. Therefore the contention of the Claimant regarding knowledge of release of payment on 8.6.2007 is unacceptable being contrary to evidence on record.

Apart from above it is also evident from record that the Claimant were already in possession of relevant documents which were made available to them by the Dy CPIO vide letter dated 18.9.2006 in reply to their RTI application dated 24.8.2006 (Ref. para 30 of SoF). Assuming one takes the date of communication of receipt of payment from client i.e. on 18.9.2006 in that event cause of action arose in favour of the Claimant on 26.9.2006 i.e. 7 days after knowledge of receipt of confirmation. The arbitration ought to have been invoked; by the Claimant on 26.9.2009, however the claimant invoked the arbitration beyond the period of limitation i.e. vide letter dated 12.4.2010.

**8.6** In view of above it is seen that the claimant slept over their right for more than 7 years without initiating any action. The Claimant had issued letter invoking arbitration only on 12.4.2010



although the cause of action or dispute for invoking arbitration had arisen long before and limitation had expired on 31.8.2003 at best on 17.9.2005. The arbitration having been invoked on 12.4.2010 is therefore hopelessly time barred.

**8.7** The contention of the Claimant that the non-payment by the Respondent did not per se constitute the dispute, only the refusal to make payment did and this refusal or contractual disputes only arose on 18.8.2006 does not have much force. It is admitted fact that the Claimant had come to know about release of payment by CBSE to the Respondent as back as in Sept. 2002 (Ref - C-14C). Since the Respondent had not released the dues, the Claimant ought to have invoked arbitration immediately thereafter within 3 years and in any case before 17.9.2005. In my opinion non release of payment by the Respondent, even after payment being released of by the client, raise and constitute contractual dispute. The period of limitation, cannot be postponed by giving letters/reminders by the Claimant asking for the payment and waiting till the limitation period expired.

**8.8** Both the parties have relied upon judgments of Hon'ble Supreme Court and different High Courts relating to the issue of cause of action and limitation.

In case of **Steel Authority of India Ltd Vs J C Budharaja**, the Hon'ble Supreme Court has held that the action must be brought within 3 years from the date when the cause of action to recover the amount arose.

In this Case the Hon'ble Court also held, .

"When contractor gave notice demanding the amount and there was no response from the appellant and the amount was not paid. The cause of action for recovery of the said amount arose from the date of notice. Contractor cannot wait indefinitely and is required to take action within the period of limitation."

**8.9** In another case titled **Mcdermott International Inc Vs Burn Standard Co. Ltd & Ors** while dealing with the issue of "arisen of dispute" Supreme court in para 128 has specifically held that in every case it is not necessary that the claim must be followed by denial for a formation of dispute. It was further held that if the matter is referred to any arbitrator within a reasonable time, the parties invoking the arbitration clause may proceed on the basis that the other party to the contract had denied or disputed his claim



or is not otherwise interested in referring the dispute to the Arbitrator.

The Hon'ble court has further specifically held that silence as well as refusal constitutes a dispute. The court has also held that negotiation of claim would not suspend cause of action.

**8.10** As far as reliance placed by the claimant on the judgment of Hon'ble Supreme Court in Hari Shankar Singhania Vs. Gaur Hari Singhania is concerned, 'the contention that the right to apply accrues when disputes and differences arise between the parties to the arbitration agreement', it will not render any assistance to the Claimant because the fact of the case in hand is totally different from the facts and circumstances of the Hari Shankar Singhania case. Firstly, the present dispute relates to construction contract while Singhania case relates to family disputes. Secondly, in Singhania case there was a family settlement which was treated differently from commercial settlement and further in present case there was no settlement at all. Thirdly, in Singhania case parties were negotiating continuously to arrive at amicable settlement while in the present case there was, even, no communication between, the, parties to resolve the issue of payment.

8.11 The Hon'ble Supreme Court in Major (Rtd) Inder Singh Rekhi Vs DDA has held that on completion of the work right to get payment would normally arise, the cause of action shall arise from when 'assertion of claim was made'.

In my view the above judgments relied upon by the Respondent strengthen the case of the Respondent on issue of cause of action for arbitration starting point of limitation and my finding / conclusion given at para 8.6 and 8.7 above.

8. A bare perusal of the aforesaid reasons would show that the learned Arbitrator has passed a reasoned order based on the material/evidence brought by the parties on the record. Learned counsel for the appellant, only espousing the issue of limitation, has urged that non-payment of dues of the appellant were a continuing cause of action which is only recorded to be rejected.



9. The findings of facts recorded by the learned Arbitrator has not been assailed by the appellant in any manner. It is well settled that the scope of jurisdiction under Section 37 of the A.C. Act is very limited. There is nothing to be discerned that the impugned award passed by the learned Arbitrator was patently wrong or contrary to law or for that matter in any manner against the public policy in India. It is the case of the appellant that sometime in the year 2007, he had gone to Sweden in connection with some other work and thereafter his brother Vinod Kumar kept on pursuing the matter with the respondent.

10. It is the matter of the record that even before availing information through reply dated 18.09.2006 in the RTI, a letter dated 17.09.2002 (Annexure P-9) had been written by the appellant to the CMD of the respondent *inter-alia* bringing to the fore that CBSE had released Rs. 3.5 lakhs for the work conducted long time back and demanded payment of his outstanding dues but in vain.

11. At that stage itself, two years had already gone by and the appellant evidently sought reference to the arbitration only on 20.05.2010.

12. In view of the foregoing discussion, the present appeal under Section 37 of the A.C. Act, is hereby dismissed. The pending application is also disposed of.

**DHARMESH SHARMA, J.**

**APRIL 24 2025/SP/sa**