



2026:DHC:4178



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

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Judgment reserved on: 04.02.2026
Judgment pronounced on: 12.05.2026

+ CS(OS) 549/2009 & I.A. 5570/2009 (for Setting Aside majority Award dated 09.12.2008)

KIDDE INDIAPlaintiff

Through: Mr. Chandan Kumar and Mr. Vikram Sharma Advocates.

versus

NTPCDefendant

Through: Mr. Puneet Taneja, Senior Advocate along with Mr. Manmohan Singh Narula, Mr. Amit Yadav and Mr. Anil Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Suit arises from the **Arbitral Award dated 09.12.2008¹** passed under the **Arbitration Act, 1940²** by the majority (*comprising of Shri Madan Lal, Justice (Retd.) CL Chaudhary*) of 3 members Arbitral Tribunal comprising of Shri Madan Lal, Justice (Retd.) CL Chaudhary and Justice (Retd.) MC Agarwal, whereby

¹ Impugned Award

² 1940 Arb Act



certain claims made by the Plaintiff were allowed and an aggregate amount of Rs. 1,12,36,762/- was awarded to the Plaintiff.

PREFACE:

2. After the passing of the Impugned Award, the Plaintiff filed an Application under Section 14 read with Section 17 of the 1940 Arb Act seeking to make the Impugned Award, the Rule of Court, which was numbered as *CS(OS) 72/2009*. In the meantime, however, the learned Arbitral Tribunal, *suo moto*, filed the Impugned Award before this Court and the same came to be registered as a separate suit, being *CS(OS) 549/2009*.

3. In view of the said development, the Plaintiff's suit, *CS(OS) 72/2009*, was disposed of. Consequently, the present Suit, being *CS(OS) 549/2009*, continues for the purpose of making the Impugned Award the Rule of the Court.

4. Thereafter, the Defendant filed an Application, being *I.A. 5570/2009*, under Section 30 and 33 of the 1940 Arb Act, in the form of objections, seeking to set aside the Impugned Award.

5. The learned Single Judge, while adjudicating the said objections *vide* Judgment dated 12.03.2019, held that the arbitration clause had been invoked on 09.12.1989 and that it was incumbent upon the Plaintiff to approach the appointing authority (President, Institute of Engineers) within sixty days thereafter. Since the Plaintiff had failed to do so, the learned Single Judge held that the claims were barred by limitation and, consequently, dismissed the suit.



6. Aggrieved thereby, the Plaintiff preferred an Appeal before the Division Bench of this Court, being ***FAO(OS)(COMM) 361/2019***³ against the Judgment dated 12.03.2021. The Division Bench, though varying the reasoning adopted by the learned Single Judge, ultimately dismissed the Appeal by holding that the question of limitation had to be assessed on the basis that the Defendant received the first Notice invoking arbitration on 10.05.1994 and not the Notice dated 09.12.1989. The Division Bench further observed that the learned Arbitral Tribunal had erred in concluding that the claims were within limitation, as the letter dated 09.12.1989 clearly demonstrated that negotiations had broken down and that the Plaintiff had elected to commence arbitral proceedings. It was further held that the non-receipt of the said Notice would not postpone the accrual of the cause of action and that, consequently, the claims were *ex facie* barred by limitation as on 10.05.1994, being the date of actual commencement of the arbitral proceedings.

7. Aggrieved by the said decision, the Plaintiff approached the Hon'ble Supreme Court by way of a Special Leave Petition (Civil), which was subsequently converted into ***Civil Appeal No.14672/2024***⁴. The Apex Court, *vide* Order dated 18.12.2024, after briefly noticing the factual background and the issues involved, set aside both the Impugned Judgments of the learned Single Judge as well as the Division Bench and restored the present Suit and objections being *I.A. 5570/2009*. The Hon'ble Supreme Court clarified that all issues, including the issue of the bar of limitation of the claims made before

³ Kidde India Ltd. vs. National Thermal Power Corpn. Ltd.

⁴ Aring out of SLP(C) No. 11815/2023, titled as “*Kidde India Ltd. vs. National Thermal Power Corpn. Ltd.*”



the learned Arbitral Tribunal, shall remain open for consideration by the learned Single Judge. However, the issue of delay in making the reference was held not to remain open, to the extent that the Division Bench had held the reference not to be time-barred. The relevant portion of the said Order reads as follows:

“1. Leave granted.

2. This is a case where the provisions of the Indian Arbitration Act, 1940 (for short, “the 1940 Act”) are applicable. An award was made on 9th December, 2008 by the Arbitral Tribunal. The objections were raised under Section 30 of the 1940 Act. The learned Single Judge came to a conclusion that there was a delay in making reference to the Arbitral Tribunal and on that ground, the learned Single Judge proceeded to set aside the award.

3. An appeal was preferred by the appellant before the Division Bench of the High Court. By the impugned judgment dated 7th February, 2023, the appeal was dismissed. The Division Bench held that the claim raised by the appellant before the Arbitral Tribunal was ex facie barred by limitation. However, the Division Bench disagreed with the finding of the learned Single Judge that the reference to the Arbitral Tribunal was time barred.

4. After having heard the learned senior counsel appearing for the parties, we find that the learned Single Judge, who was dealing with the petitions under Sections 30/33 of the 1940 Act, had not specifically answered the question whether the claim made before the Arbitral Tribunal was barred by limitation. The learned Single Judge proceeded on the footing that what was barred was the reference to the Arbitral Tribunal on account of delay. This finding was disapproved specifically by the Division Bench. After disagreeing with the said finding, only logical course which was open to the Division Bench was to set aside the judgment and order of the learned Single Judge and to direct the learned Single Judge to consider the application under Section 30 of the 1940 Act in accordance with law. The Division Bench has dealt with the issue of bar of limitation of the claim made before the Arbitral Tribunal, though the issue was not decided by Section 30 Court. At the threshold, Section 30 Court allowed the application and set aside the award.

5. Therefore, we set aside both the impugned judgments and restore the applications under Sections 30 and 33 of the 1940 Act (CS (OS) No.549/2009 and IA No.5570/2009) to the file of the learned Single Judge of the High Court of Delhi. We clarify that all the issues including the issue of bar of limitation of the claim made



before the Arbitral Tribunal shall remain open for consideration of the learned Single Judge. However, the issue of delay in making reference will not remain open as to that extent, the Division Bench is right.

6. We direct that the restored cases shall be listed before the roster Bench of the High Court of Delhi on 15th January, 2025 in the morning. We direct the appellant and the respondent to appear before the learned Single Judge on that day for the purposes of fixing a date for hearing. The learned Single Judge will give necessary priority to the hearing of the restored cases considering the fact that the award is of the year 2008.

7. The Appeal is partly allowed on the above terms.”

(emphasis supplied)

8. Pursuant to the matter being remanded back by the Hon'ble Supreme Court, the parties appeared before this Court on 04.02.2026 and advanced detailed submissions.

9. The arguments advanced on behalf of both sides were confined exclusively to the issue as to whether the claims, as raised by the Plaintiff, which ultimately formed the subject matter of adjudication before the learned Arbitral Tribunal, had been instituted within the prescribed period of limitation reckoned from the date of accrual of the cause of action.

10. At this stage, this Court deems it appropriate to clarify that the present adjudication is confined solely to the said issue of limitation. While undertaking the present exercise, this Court has independently examined the entire record of the suit, along with the pleadings, documents, and material placed on record, uninfluenced by any observations made in the earlier round of litigation either by the Coordinate Bench or the Division Bench. The issue is, therefore, being examined afresh on its own merits and strictly in accordance with the pleadings on record and the legal position governing the controversy.



BRIEF FACTS:

11. The adjudication of the disputes between the parties has had a chequered history and may broadly be divided into two segments, *viz.*, first, the proceedings leading up to the passing of the Impugned Award, and second, the proceedings that ensued after the Impugned Award was rendered. For the purposes of adjudicating the limited issue presently before this Court, the relevant facts have been summarized in the subsequent paragraphs.

12. The present proceedings arise out of a contract awarded by the **Defendant**⁵ to the **Plaintiff**⁶ for the installation of fire protection systems at the Ramagundam Super Thermal Power Project, Stage-I. The said contract was awarded *vide* Letter dated 24.03.1982 and required the Plaintiff to carry out installation works in accordance with the prescribed technical specifications and contractual conditions stipulated by the Defendant.

13. The contract, as executed between the parties, contained an Arbitration Clause which provided that any disputes or differences arising out of or in connection with the contract, or touching upon its interpretation, execution, or performance, would be resolved through arbitration in accordance with the provisions of the 1940 Arb Act.

14. Pursuant to the award of the contract, the Plaintiff undertook and executed the contractual works relating to the installation of fire protection systems. Upon completion of the works, the fire protection systems installed by the Plaintiff were taken over by the Defendant on 04.08.1986.

⁵ National Thermal Power Corporation Ltd./NTPC

⁶ M/s Vijay Machinery Store/Vijay Fire Protection Systems Ltd. - Now as Kidde India Ltd.



15. Thereafter, by a telex communication dated 14.10.1987, the Defendant informed the Plaintiff that all pending bills submitted by the Plaintiff had been processed and cleared. However, subsequently on 23.11.1987, the Plaintiff raised certain claims asserting that it had executed additional works beyond the scope of the original contract for which payment had not been released by the Defendant.

16. The Defendant responded to the said claims through a detailed communication dated 21.06.1988, whereby it rejected the claims raised by the Plaintiff.

17. Thereafter, on 06.03.1989, the Plaintiff again raised the same claims amounting to Rs. 74,80,122.87/- along with interest calculated at the rate of 18% per annum for the period from 01.06.1983 to 28.02.1989. In support of its claim, the Plaintiff relied upon various communications that had been exchanged between the parties over the course of the contractual relationship. In the said communications, the Plaintiff further indicated that in the event the claims were not settled amicably, it would be constrained to invoke the arbitration clause contained in the contract.

18. As there was no satisfactory response by the Defendant to the said demand, the Plaintiff purportedly invoked the Arbitration Clause through a letter dated 09.12.1989. In the said communication, the Plaintiff reiterated its claim for Rs. 74,80,122.87/- and nominated Shri M.M. Sharma as its arbitrator in terms of the arbitration clause contained in the contract. The Defendant was simultaneously called upon to appoint its nominee arbitrator in accordance with the contractual mechanism. The Defendant, however, variably asserts that



it had never received the said letter dated 09.12.1989, which sought to invoke arbitration.

19. The contract between the parties contained a detailed dispute resolution mechanism under Clauses 25 and 26 of the General Conditions of Contract. Clause 25 contemplated that disputes involving questions of fact arising under the contract were to be initially decided by the Engineer, subject to a right of appeal available to the Plaintiff. The Clause further envisaged that the parties would attempt to resolve disputes amicably prior to resorting to arbitration. Clause 26 provided that in the event the disputes remained unresolved, they would be referred to arbitration before a tribunal consisting of three arbitrators, one nominated by each party and the third to be appointed by the President of the Institution of Engineers, India. The clause also provided that if either party failed to appoint its nominee arbitrator within sixty days of receipt of a notice invoking arbitration, the President of the Institution of Engineers would be empowered to appoint the arbitrator on behalf of the defaulting party.

20. Following the alleged invocation of arbitration in the year 1989, no further effective steps were taken for a considerable period of time. Nearly four and a half years later, the Plaintiff issued another Notice dated 10.05.1994 reiterating the earlier invocation of arbitration dated 09.12.1989. In the said Notice, the Plaintiff asserted that despite the earlier invocation of arbitration and subsequent reminders, the Defendant had failed to appoint its nominee arbitrator. Accordingly, the Plaintiff granted the Defendant a final opportunity of fifteen days to appoint its arbitrator, failing which the arbitrator nominated by the



Plaintiff would proceed to act as the sole arbitrator in accordance with the provisions of the 1940 Arb Act.

21. The Defendant responded to the said Notice by way of a letter dated 02.06.1994, stating that the matter concerning the appointment of its nominee arbitrator was under consideration and that some time was required for the said purpose.

22. However, the Defendant did not subsequently appoint any arbitrator within the time indicated. Consequently, the Plaintiff approached the President of the Institution of Engineers, India, seeking the appointment of an arbitrator on behalf of the Defendant and for the constitution of the Arbitral Tribunal in accordance with the contractual Arbitration Clause.

23. Acting upon the request made by the Plaintiff, the President of the Institution of Engineers, India, by a letter dated 02.06.1995, appointed Mr. D.B. Chachad as the nominee arbitrator on behalf of the Defendant and Brigadier D.R. Kathuria as the presiding arbitrator of the tribunal.

24. Subsequently, the Defendant instituted *Suit No. 2065A/1996* under Sections 5, 11 and 12 of the 1940 Arb Act seeking revocation or supersession of the Arbitration Agreement. In the said proceedings, the Defendant contended that the mandatory conditions precedent for invoking arbitration under the General Conditions of Contract had not been complied with. The Defendant also raised objections regarding the validity of the appointment of Shri M.M. Sharma as the arbitrator by the Plaintiff.

25. During the pendency of the said proceedings, the Plaintiff's nominee arbitrator resigned from the learned Arbitral Tribunal. In



view of this development, the above-said Petition filed by the Defendant was disposed of by the Court on 07.03.2003 as having become infructuous.

26. Thereafter, the Plaintiff appointed Justice C.L. Chaudhary (Retd.) as its nominee arbitrator. In the meantime, Brigadier D.R. Kathuria, who was serving as the presiding arbitrator, passed away. Consequently, the President of the Institution of Engineers appointed Shri Madan Lal as the presiding arbitrator.

27. Subsequently, the Defendant once again challenged the appointment of its nominee arbitrator by filing *Suit No. 1448/2006*. During the course of those proceedings, Mr. D.B. Chachad resigned as arbitrator. Thereafter, the Defendant appointed Justice M.C. Aggarwal (Retd.) as its nominee arbitrator.

28. As a result, the learned Arbitral Tribunal ultimately came to be constituted with Justice C.L. Chaudhary (Retd.) as the Plaintiff's nominee arbitrator, Justice M.C. Aggarwal (Retd.) as the Defendant's nominee arbitrator, and Shri Madan Lal as the presiding arbitrator.

29. Thereafter, among the other things, the Defendant filed another suit, being CS(OS) 1876/2006, under Section 33 of the 1940 Arb Act, seeking a declaration that the mandate of the learned Arbitral Tribunal stood terminated. During the pendency of these proceedings, the learned Arbitral Tribunal imposed costs upon the Defendant. The Defendant challenged the said Order before the Court. By Order dated 11.12.2006, the Court set aside the costs imposed by the learned Arbitral Tribunal and extended the time for completion of the arbitral proceedings by four months from 16.12.2006, while clarifying that



such extension would be without prejudice to the Defendant's challenge to the jurisdiction of the learned Arbitral Tribunal.

30. Subsequently, by Order dated 18.08.2008, the Court modified its earlier directions and permitted the learned Arbitral Tribunal to proceed with and pronounce the Impugned Award, while reserving liberty in favour of the Defendant to file appropriate objections to the same if circumstances so warranted. In view of this development, the suit filed by the Defendant under Section 33 of the 1940 Arb Act was disposed of.

31. Thereafter, the learned Arbitral Tribunal concluded the arbitral proceedings and delivered the Impugned Award on 09.12.2008. The award was rendered by a majority of two arbitrators, while the third arbitrator delivered a separate minority opinion.

32. Following the passing of the Impugned Award, the Plaintiff instituted a suit being *CS(OS) 72/2009* seeking that the Impugned Award be made the Rule of the Court. However, the learned Arbitral Tribunal itself filed the same *suo motu*, before the Court, which was registered as a separate proceeding being *CS(OS) 549/2009*. In view of the said development, *CS(OS) 72/2009*, which had earlier been filed by the Plaintiff, was dismissed as withdrawn.

33. In the present proceedings, being *CS(OS) 549/2009*, the Defendant filed an Application, being *I.A. No. 5570/2009*, under Sections 30 and 33 of the 1940 Arb Act, seeking the setting aside of the Impugned Award.

34. The learned Single Judge, while adjudicating the said objections *vide* Judgment dated 12.03.2019, held that the Arbitration Clause had been invoked on 09.12.1989 and that it was incumbent upon the



Plaintiff to approach the appointing authority, *namely*, the President of the Institution of Engineers, within a period of sixty days thereafter. Since the Plaintiff had failed to take such steps within the stipulated period, the learned Single Judge held that the claims raised by the Plaintiff were barred by limitation.

35. Aggrieved by the said findings, the Plaintiff preferred *FAO(OS)(COMM) 361/2019*, which came to be dismissed by the Division Bench of this Court *vide* judgment dated 07.02.2023. The Division Bench held that the issue of limitation had to be assessed on the basis that the Defendant received the first Notice invoking arbitration on 10.05.1994 and not the Notice dated 09.12.1989. The Division Bench further observed that the learned Arbitral Tribunal had erred in concluding that the claims were within limitation, as the letter dated 09.12.1989 clearly demonstrated that negotiations between the parties had broken down and that the Plaintiff had elected to commence arbitral proceedings. It was further observed that the alleged non-receipt of the said Notice by the Defendant would not postpone the accrual of the cause of action. Consequently, the Division Bench concluded that the claims were *ex facie* barred by limitation as on 10.05.1994, which was treated as the date of commencement of the arbitral proceedings.

36. Being aggrieved by the judgment of the Division Bench, the Plaintiff approached the Hon'ble Supreme Court by way of a Special Leave Petition (Civil), which was subsequently converted into *Civil Appeal No.14672/2024*.

37. The Hon'ble Supreme Court, *vide* order dated 18.12.2024, passed in the said Appeal, set aside both the Impugned Judgments of



the learned Single Judge as well as the Division Bench and restored the present Suit along with the objections filed by the Defendant. The Hon'ble Supreme Court clarified that all issues, including the issue of the bar of limitation of the claims made before the learned Arbitral Tribunal, would remain open for consideration by the learned Single Judge. However, it was clarified that the issue regarding the delay in making the reference to arbitration would not remain open, to the extent that the Division Bench had held that the reference itself was not time-barred.

38. Pursuant to the said directions of the Hon'ble Supreme Court, the present matter has come up for fresh adjudication before this Court.

SUBMISSIONS OF THE PARTIES:

39. In support of the objections raised to the Impugned Award, the learned Senior Counsel appearing for the Defendant/Objector advanced detailed submissions before this Court on 04.02.2026, which may broadly be summarised as follows:

- I. It was contended that the learned Arbitral Tribunal erred in entertaining and adjudicating the claims raised by the Plaintiff (*Claimant before the learned Tribunal*), which were *ex facie* barred by limitation.
- II. It was submitted that the works under the relevant contract stood completed and were duly taken over by the Defendant on 04.08.1986. Thereafter, the Defendant informed the Plaintiff that all pending bills had been cleared. Notwithstanding the same, the Plaintiff raised certain additional claims on



23.11.1987, which were categorically rejected by the Defendant by way of a communication dated 21.06.1988. According to the Defendant, this rejection constituted the point at which the disputes between the parties finally crystallised, and consequently, the limitation period of three years for invoking arbitration commenced from that date.

- III. It was further submitted that the Plaintiff reiterated the earlier claims by way of a communication dated 06.03.1989, wherein it allegedly asserted that arbitration proceedings would be initiated if the claims were not settled. However, the Defendant contended that such reiteration of claims, or any subsequent correspondence exchanged between the parties, could not have the effect of recommencing or extending the period of limitation that had already begun to run from 21.06.1988. Mere reminders or representations cannot postpone the accrual of the cause of action.
- IV. With regard to the alleged Notice invoking arbitration dated 09.12.1989, it was submitted that the said Notice was never received by the Defendant.
- V. During the arguments, the Defendant maintained a vehement stand that the burden squarely lies upon the Plaintiff to establish service of the said Notice.
- VI. It was further contended that the Defendant has consistently taken the position that no such Notice was ever received, and even the learned Arbitral Tribunal recorded a finding acknowledging that the Defendant had not received the said Notice.



- VII. In these circumstances, it was argued that since the Notice dated 09.12.1989 was never served upon the Defendant, arbitration proceedings could not be said to have commenced at that stage in terms of the governing statutory provisions. Consequently, the running of the limitation period for the underlying claims was never interrupted.
- VIII. According to the Defendant, arbitration was effectively invoked only upon the Defendant receiving a subsequent Notice dated 10.05.1994. By that time, nearly six years had elapsed from the date on which the disputes had crystallised, which was far beyond the prescribed period of three years. Therefore, the reference to arbitration itself was hopelessly barred by limitation.
- IX. In support of the aforesaid submissions, reliance was placed upon the judgments of the Hon'ble Supreme Court, including *Panchu Gopal Bose v. Board of Trustees for Port of Calcutta*⁷ and *Inder Singh Rekhi v. DDA*⁸, to contend that the limitation period for commencement of arbitration runs from the date on which the cause of action first accrues and cannot be indefinitely extended by repeated representations or continued correspondence between the parties.
- X. Applying this principle to the present case, it was argued that the cause of action arose on 21.06.1988 when the Defendant rejected the Plaintiff's additional claims, whereas the Notice invoking arbitration was admittedly received only on 10.05.1994, well beyond the prescribed period of three years.

⁷ (1993) 4 SCC 338

⁸ (1988) 2 SCC 338



Accordingly, the claims raised by the Plaintiff before the learned Arbitral Tribunal were liable to be held as barred by limitation.

XI. To further buttress the aforesaid submissions, the learned Senior Counsel also relied upon certain observations contained in the judgments rendered in the earlier rounds of litigation, in the present case, between the parties before the learned Co-ordinate Bench, Division Bench of this Court, as well as the Hon'ble Supreme Court.

40. **Per Contra**, while refuting the objections raised by the Defendant to the Impugned Award, the learned counsel appearing for the Plaintiff (*Claimant before the learned Arbitral Tribunal*) made the following submissions before this Court on 04.02.2026:

- I. At the outset, it was submitted that in view of the Order dated 18.12.2024 passed by the Hon'ble Supreme Court, the only contentious issue between the parties, at this stage, that survives for consideration is whether the claims, as raised by the Plaintiff, were within the prescribed period of three years from the date of accrual of the cause of action. It was further submitted that, in terms of paragraph 5 of the said Order, the question as to whether the arbitral proceedings commenced within the period of limitation upon issuance of the Notice invoking arbitration does not fall for examination in the present proceedings.
- II. It was contended that the Defendant's objection on the ground of limitation is wholly misconceived and contrary to the findings recorded by the learned Arbitral Tribunal. It was



submitted that, upon a detailed examination of, *inter alia*, the correspondence exchanged between the parties and admission of the Defendant, the learned Arbitral Tribunal rightly concluded that the disputes did not crystallise immediately upon completion of the works. Instead, the parties continued to engage in discussions and negotiations regarding settlement of the Plaintiff's claims, and therefore, the cause of action cannot be said to have arisen in the manner as suggested by the Defendant.

- III. It was further submitted that the Defendant had never issued any unequivocal or final repudiation of the Plaintiff's claims at the relevant time. In the absence of a clear and categorical rejection, the cause of action cannot be said to have arisen on the date now sought to be relied upon by the Defendant.
- IV. With respect to the Notice invoking arbitration dated 09.12.1989, it was argued that the Defendant had indeed received the said Notice, and this fact was never categorically denied by the Defendant before the learned Arbitral Tribunal in its statement of defence. It was also argued that the Defendant's position regarding non-receipt of the said Notice had not been consistently pleaded.
- V. It was then contended that, proceeding on a demurrer, the disputes between the parties crystallised on 21.06.1988, when the Defendant allegedly rejected the additional claims raised by the Plaintiff, the arbitration clause was invoked by the Plaintiff on 09.12.1989, which was well within the prescribed period of limitation, and therefore, the claims could not be said to be



barred by limitation.

- VI. In support of the above submissions, reliance was placed upon Section 37 of the 1940 Arb Act as well as the judgments of the Hon'ble Supreme Court, *namely, Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*⁹ and *J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd.*¹⁰.
- VII. It was additionally submitted that even immediately prior to the Notice invoking arbitration dated 09.12.1989, and even thereafter, the parties were engaged in negotiations with a view to resolving the disputes amicably. Therefore, even assuming for the sake of argument that the said Notice was not received by the Defendant, the fact remains that the parties continued to engage in discussions during the period between 1991 and 1993. In any event, it is an admitted position that the Defendant received the subsequent Notice invoking arbitration dated 10.05.1994. Viewed from this perspective as well, the Plaintiff contended that the claims raised before the learned Arbitral Tribunal cannot be held to be barred by limitation.
- VIII. To reinforce these submissions, the learned counsel for the Plaintiff also relied upon certain portions of the judgments rendered in the earlier rounds of litigation, in the present case, before the Co-Ordinate Bench, Division Bench of this Court, and the Hon'ble Supreme Court.
- IX. Lastly, while concluding the arguments, the learned counsel for the Plaintiff placed vehement and considerable reliance upon the pleadings of the Defendant contained in its objections to the

⁹ (2004) 7 SCC 288

¹⁰ (2008) 2 SCC 444



Impugned Award, being *IA No. 5570/2009*. Specific reference was made to Grounds D and K of the said IA, wherein, according to the Plaintiff, the Defendant had not expressly denied the receipt of the Notice dated 09.12.1989.

- X. On this basis, it was argued that the Defendant cannot now be permitted to raise a contrary contention regarding the service or non-receipt of the said Notice at this stage of the proceedings.

ANALYSIS:

41. This Court has heard the learned counsel appearing on behalf of the parties at considerable length and has carefully perused the entire record, including the pleadings, documents placed on record, the arbitral proceedings and the Impugned Award, as well as the judicial precedents relied upon by both sides.

42. The primary and determinative question that arises for consideration in the present case is whether the claims raised by the Plaintiff, which ultimately formed the subject matter of adjudication before the learned Arbitral Tribunal, had been instituted within the prescribed period of limitation reckoned from the date of accrual of the cause of action.

43. However, in the factual backdrop of the present case, the aforesaid issue cannot be adjudicated in isolation. Its proper determination necessarily requires this Court to first examine certain foundational legal principles, as well as the relevant factual aspects emerging from the pleadings and the material placed on record.

44. Accordingly, for the sake of clarity and to facilitate a structured adjudication of the controversy, this Court proposes to examine the



aforesaid legal and factual issues *seriatim*. The same are, therefore, analysed hereinafter under distinct and systematic heads.

A. Distinction Between Limitation Governing Substantive Claims and Limitation for Reference of Disputes to Arbitration

45. At the outset, it is necessary to clearly delineate the distinction between two separate and independent limitation regimes that operate within the framework of arbitration law. The first pertains to the limitation governing the substantive or underlying claims arising out of the contractual relationship between the parties. While, the second pertains to the limitation governing the reference of such disputes or claims to the learned Arbitral Tribunal for the purpose of adjudication.

46. These two limitation regimes operate in distinct and independent spheres, are founded upon different juridical considerations, and serve different legal purposes. Consequently, they cannot be conflated, merged, or treated as interchangeable concepts. Any failure to maintain this distinction is likely to result in a fundamental misconception regarding the true nature and scope of the inquiry required in cases involving objections based on limitation in arbitral proceedings.

47. Dealing first with the former aspect, which constitutes the central issue arising for consideration in the present adjudication, the controversy relates to the limitation governing the substantive claims themselves. Such claims arise out of the underlying contractual relationship between the parties and ultimately constitute the subject matter of adjudication before the learned Arbitral Tribunal. The limitation applicable to these substantive claims ordinarily commences from the date on which the cause of action accrues,



namely, the point at which the disputes between the parties crystallise or when there occurs a clear and unequivocal denial of the entitlement asserted by one party, against the other. In certain situations, the determination of the precise date of accrual may also depend upon the terms and stipulations embodied in the contract executed between the parties, including clauses relating to payment, certification, finalisation of accounts, issuance of completion certificates, or settlement of claims.

48. In the present case, it is not in dispute that the period of limitation applicable to the Plaintiff's substantive claims is three years. Accordingly, the principal issue that falls for consideration before this Court is whether the claims raised by the Plaintiff against the Defendant, which subsequently formed the subject matter of adjudication before the learned Arbitral Tribunal, were invoked for arbitration within a period of three years from the date of accrual of the cause of action governing such claims.

49. The inquiry required to determine this aspect of limitation is essentially two-fold. *First*, this Court is required to ascertain the precise point of time at which the cause of action in respect of the substantive disputes or claims, arising out of the contractual relationship between the parties, came into existence or crystallised. *Secondly*, this Court must examine whether the Plaintiff invoked arbitration by serving a notice invoking arbitration in terms of Section 37(3) of the 1940 Arb Act, which provision is in *pari materia* with Section 21 of the **Arbitration and Conciliation Act, 1996**¹¹, within a period of three years from the date of accrual of such cause of action.

¹¹ 1996 Arb Act
CS(OS) 549/2009



50. Turning now, briefly, to the second aspect, merely for the sake of clarification since the same does not arise for adjudication in the present proceeding (*In view of the Hon'ble Supreme Court's remand order dated 18.12.2024 passed in Civil Appeal No.14672/2024*), pertaining to the limitation governing the reference of disputes or claims to the learned Arbitral Tribunal, it may be observed that the relevant cause of action for this purpose arises at a subsequent and distinct stage.

51. Such a stage commences only after a valid notice invoking arbitration has been issued by one party to the other party, and thereafter, there has occurred a failure, neglect, or refusal on the part of the opposite party to act in accordance with the agreed procedure for appointment or constitution of the Arbitral Tribunal.

52. The limitation governing such reference to arbitration is controlled by Article 137 of the **Limitation Act, 1963**¹², which prescribes a period of three years from the date on which the right to apply accrues. Such right accrues when the opposite party fails, neglects, or refuses to appoint an arbitrator in accordance with the contractual mechanism agreed between the parties, thereby giving rise to a cause of action for approaching the competent Court or other appropriate forum seeking constitution of the Arbitral Tribunal and consequential reference of the disputes to arbitration.

B. Erroneous Findings of the Learned Arbitral Tribunal Regarding the Limitation Applicable to the Plaintiff's Substantive Claims

¹² Limitation Act
CS(OS) 549/2009



53. It is an undisputed position that the issue of limitation was squarely raised before and adjudicated by the learned Arbitral Tribunal as Issue No. 1. The majority of the learned Tribunal, upon an elaborate consideration of the factual matrix and the legal position, returned a finding that the claims of the Plaintiff were not barred by limitation.

54. In this regard, the learned Arbitral Tribunal undertook an examination of the sequence of events, including the raising of bills, correspondence exchanged between the parties, the alleged invocation of arbitration, and the subsequent proceedings, and thereafter proceeded to analyse the governing principles of law relating to accrual of cause of action and commencement of limitation. The relevant findings and reasoning of the learned Arbitral Tribunal on this issue have been extracted herein below in *toto*:

“1.0 Issue No. 1

"Whether Claimant's Claims are barred by limitation as alleged by Respondent?"

1.1 For deciding this issue, following undisputed facts are important:

- i Claimant raised one bill dated 11.06.1985,
- ii By their letter dated 13.05.1986 (Ex-C-156) Respondent requested Claimant to postpone winding up of their establishment, which was otherwise scheduled to be closed by 12.05.1986.
- iii Document dated 04.08.1986 (Ex-C-273) issued by Respondent shows that they provisionally took over the system from Claimants that day.
- iv Claimant raised another bill dated 6.3.1989 (Ex-C-216). Claimant call it their final bill.
- v Claimant invoked arbitration on 9.12-.1989 for non payment of their bill dated 6.3.1989 (Ex-C-253).
- vi In their reply dated 08.07.2005 filed by Respondent in OMP No. 16 of 2005 before Hon'ble High Court of Delhi (Annexure R-1 colly to rejoinder by Claimant), Respondent denied having received the said letter dated 09.12.1989.



- vii In their admission / denial dated 13.01.2007, Respondent denied receipt of "Letters Legal issued by Claimant." notices
- viii Claimant's witness in paragraph no. 17 of his affidavit dated 14.2.2007 averred that Respondent did not receive letter-dated 09.12.1989. No question was put to Claimant's witness to unsettle this position.
- ix Respondent's witness nowhere states in his affidavit dated 10.2.2007 that letter dated 09.12.1989 was received by the Respondent.
- x After ongoing settlement process did not yield result, Claimant invoked arbitration once again by their lawyer's notice dated 10.5.1994 (Ex-C-261), which was received by Respondent and they replied to it by their letter dated 02.06.1994 (Ex-C-262), stating that the issue of nominating arbitrator by them was under active consideration.
- xi First hearing in arbitration took place on 29.07.1995.
- xii This arbitration was stayed by order dated 11.09.1995 passed in suit no. 2065A of 1995 filed by Respondent before Hon'ble Delhi High Court. This stay was vacated on 7.3.2003 when suit was dismissed and Hon'ble Court allowed a fresh arbitral tribunal to be constituted and the stalled arbitration to proceed.
- xiii This arbitral tribunal was reconstituted and the arbitral process started from 03.04.2004.
- xiv While answering question no. 19 during his cross examination dated 08.05.2007, Respondent's witness, inter alia, stated, "NTPC has not prepared any final bill."

1.2 In the facts aforesaid, for establishing limitation, it needs to establish as to when cause of action accrued.

1.2.1 As held by the Hon'ble Supreme Court in AIR 1988 SC 1007 entitled **Inder Singh Rekhi v. DDA**, Article 137 of the Limitation Act, 1963 applies for the purposes of proceedings to start under sections 8 or 20 of the Act. Article 137 reads as under:

Art. 137

Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues
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While deciding the issue in **Inder Singh Rekhi** matter, Hon'ble Supreme Court, inter alia, held that,

"Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has



been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was nonpayment, the cause of action arose from that date, that is to say, February 28, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R. S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case."

1.2.2 Earlier the same view was taken by Hon'ble Delhi High Court also in AIR 1981 Delhi 293 entitled **M/s. Oriental Building & Furnishing Co. Ltd., New Delhi v. Union of India**, where it held that:

"9. In this connection, it is necessary to note that a difference can arise long after some work has been done under a contract. There can be negotiations between the parties and all sorts of correspondence. But, it is only when they come to the conclusion that they cannot resolve the dispute between them, that it can be said that a difference arises. A difference under the arbitration



agreement is a claim made by one party which is refuted by the other party. At that stage, it is open to the parties or any of them to say-now let us go to arbitration to get this difference settled. It is at this stage that it is possible to say that a difference has arisen between them. In this sense, Section 20 of the Arbitration Act differs from the normal kind of claims that arise in suits. In the case of a suit, the date on which the cause of action arises is the date from which the limitation period starts. Under Section 20, it is the date on which the right to apply accrues that determines the starting point. That starting point does not coincide with the date on which the cause of action for filing a suit arises.

10. To take a simple illustration. If there are two parties to a contract in which one claims a breach of contract by the other, then the period of limitation for filing the suit starts from the date of the breach. That is not the determining date if the contract is subject to an arbitration Clause. If there is an arbitration Clause, then the concerned party will make a demand from the other party and it is only when the demand is refuted or declined that the difference arises. It, therefore, follows that the bar contemplated by the Limitation Act for filing an application under Section 20 of the Arbitration Act is different from that contemplated by the same Act for instituting a suit."

1.2.3 In **S. Rajan v. State of Kerala** ((1992) 3 SCC 608) it was held by Hon'ble Supreme Court that the right to apply for arbitration proceeding under Section 20 of the Arbitration Act, 1940 runs from the date when the dispute arises. It observed:

"11. Reading Article 137 and sub-section (1) of Section 20 together, it must be said that the right to apply accrues when the difference arises or differences arise, as the case may be, between the parties. It is thus a question of fact to be determined in each case having regard to the facts of that case."

1.2.4 Following observations of Hon'ble Delhi High Court are very pertinent to this case. Hon'ble Court held in 74 (1998) DLT 241, **M/s. United Engineers and Anr. v. M/s. Ahinsa Co-Op. Group Housing Society Ltd.** that,

"12. Reverting now to the issue raised on the point of limitation to apply under Section 20 of the Act, in view of the decisions of the Supreme Court in *The Kerala State Electricity Board v. T.P. Kunhaliumma*, AIR 1977 SC 282, and followed in *S. Rajan's* case (supra), it cannot be disputed that the application under Section 20 of the Act is



governed by Article 137 of the Limitation Act, 1963 and the period of three years stipulated therein, begins to run from the date when the 'right to apply accrues'. The real controversy, however, is about the date when the right to make the present petitions accrued to the petitioners. According to the petitioners it accrued on 21st December, 1994 on the respondent declining to refer the disputes to an Arbitrator in terms of Clause 6 of the agreement and, thus, the present petitions filed in October, 1995 are well within time. On the other hand the stand of the respondent is that it accrued on 30th September, 1989 when the petitioners submitted their final bill to the Architects for settlement and in any event on 27th December, 1990 when the Architects issued the 'full and final certificate' for payment in terms whereof, no payment was made, the present petitions filed on 16th October, 1995 are barred by time. It would appear that Clause 2 of the Articles of agreement between the parties provides for payment by the respondent and in case of dispute about the amount due as payable, Clause 6 of the agreement provides for settlement by the Architects. Admittedly, as noticed above, the disputes did arise and it was referred by the contractors to the Architects, who, after notice to the respondent, decided the matter and communicated to the parties about their making and issuing 'full and final certificate' on 27th December, 1990. Basing its claim thereon, the petitioners by their letter dated 13th December, 1994 called upon the respondent to refer the question of non-payment in terms of the Architect's certificate for adjudication by arbitration. The respondent disputed and denied its liability to pay under the said certificate for the first time in its reply dated 27th December, 1994, giving rise to cause of action to apply under Section 20 of the Act. It was on this date that the right to apply accrued in favour of the petitioners. The application filed on 16th October, 1995 cannot be, thus, said to be barred by time.

13. The contention of Mr. Rana, learned Counsel for the respondent, however, is that the certificate having been issued by the Architects on 27th December, 1990, the cause of action to apply arose then only, is meritless. It is only on demand to appoint an Arbitrator and its denial that cause of action to apply under Section 20 of the Act accrues and not when the payment became due. It was also submitted for the respondent that the claims themselves are barred by time and, therefore, there is no point in referring the claims for arbitration. Be that as it may, in a



matter referable to arbitration it is not for this Court to comment on it. The question whether the claims are barred by time falls within the domain of Arbitrator and is not to be decided by the Court before making reference. Thus the present application, filed within three years of respondents reply dated 21st December, 1994, are well within time."

1.2.5 Weight of authority is clearly in favour of the view that it is only if there is repudiation of a claim, there is a dispute in respect thereof. This is reflected in stand taken by various High Courts, as are reflected in the following judgments:

- a) AIR 1973 MP 261 **Dillip Construction Co. v. Hindustan Steel Limited**
- b) AIR 1985 Orissa 182: **Secretary to Government of Orissa, Irrigation Department and Others v. Raghunath Mohapatra**
- c) AIR 1985 Delhi 358: **Shah Construction Co. Ltd. Bombay v. Municipal Corporation of Delhi**

1.2.6 Hon'ble Delhi High Court further affirmed this principle in *Radical Builders Vs. Pharmaceutical Employees Co-bp. Group Housing Society Ltd.* reported as 137 (2007) DL T 709, where it held, inter alia, that,

"**23.** From a reading of the principles laid down in the afore noticed judicial pronouncements it is clear that refusal to pay the final bill constitutes a new cause of action and the starting point of limitation for the payment will arise from the date of default in payment of such bills. It is also extremely well settled that it is only upon refusal to make payment of the bill that cause of action for invoking the arbitration clause would arise. In the instant case, the petitioner sought reference of the matter and appointment of the Arbitrators also by its notice dated 15th June, 1994 which was also not acceded to by the respondent. "

1.2.7 Confirming the above position in law, Hon'ble Supreme Court in the case of **Hari Shankar Singhania Vs. Gaur Hari Singhania**, (2006) 4 SCC 658, inter alia, held that,

"**24.** Where a settlement with or without conciliation is not possible, then comes the stage of adjudication -by way of arbitration. Article 137, as construed in this sense, then as long as parties are in dialogue and even the differences would have surfaced it cannot be asserted that a limitation under Article 137 has commenced. Such an interpretation will compel the parties to resort to litigation/arbitration even where there is serious hope of the parties themselves resolving the issues. The learned Judges of the High



Court, in our view, have erred in dismissing the appellants appeal and affirming the findings of the learned Single Judge to the effect that the application made by the appellants under Section 20 of the Act, 1940 asking for reference was beyond time under Article 137 of the Limitation Act. The learned Judges ought to have allowed the appeal and quashed and set aside the impugned order passed by the learned Single Judge and ought to have restored and allowed arbitration suit filed by the appellants. As already noticed, the correspondence between the parties, in fact, bears out that every attempt was being made to comply with and carry out the reciprocal obligations spelt out in the agreement between the parties. As rightly pointed out by learned counsel for the appellant that the learned Judges of the Division Bench have erred in coming to the conclusion that the distribution of immovable properties in specie as provided in the Deed of Dissolution dated 26.03.1987 and a Supplementary Agreement dated 20.03.1987 could not be done before 31.05.1987 due to some differences. There is absolutely no material on record on the basis of which the learned Judges could have come to such a conclusion. None of the correspondence referred to by the learned Judges spells out the existence of any disputes as a result of which the properties could not be distributed prior to 31.05.1987."

"32. It cannot be said that merely because nominees were appointed for working out an arrangement, which could not ultimately be arrived at, a dispute or difference arose way back in February 1988. In fact, even immediately after this, the correspondence exchanged between the parties reveals a forthcoming attitude and amiable efforts made towards implementing the deed of dissolution."

"37. Therefore, we observe that the right to apply under section 20 of the Arbitration Act, 1940 accrued to the appellants only on the date of the last correspondence between the parties and the period of limitation commences from the date of the last communication between the parties. Therefore, the finding of the High Court that the application under section 20 of the Arbitration Act, 1940, is beyond the period of limitation is erroneous."

1.2.8 This position was further affirmed by the Hon'ble Supreme Court in **Punjab State and others Vs. Dina Nath, 2007 (5) SCC 28**, where it inter alia, held that,



"Accepting the principles laid down in S. Rajan ((1992) 3 SCC 608) this Court in Hari Shankar Singhania v. Gaur Hari Singhania ((2006) 4 SCC 658) again reiterated the principle that an application under Section 20 of the Act for filing the arbitration agreement in court and for reference of the dispute to arbitration in accordance therewith is required to be filed within a period of three years when the right to apply accrues and that the said right accrues when difference or dispute arises between the parties to the arbitration agreement."

1.3 One more issue is very important for the purpose of the adjudication of this issue. This relates to the notice dated 09.12.1989 issued by the Claimants, seeking inter alia, the appointment of the arbitrator by the Respondent. Section 37. (3) of the Arbitration Act, 1940 reads as under:

"(3) For the purpose of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated. (9 of 1908)."

1.3.1 Admittedly, even as per their admission /denial, as set out hereinabove, Respondent have denied receipt of letter / notice dated 9.12.1989. Admittedly, when they did not receive the said letter / notice, arbitration did not commence.

1.4 Having set out the 'accepted position' in law, we need to apply the same to the facts of the case.

1.4.1 In their defence statement, Respondents have devoted three pages on the issue of limitation. They have set out that,

- a) Initial claim was made by letter dated 11.06.1985,
- b) Claimant demanded payment by letter dated 6.3.1989,
- c) By letter dated 9.12.1989, Claimant invoked arbitration,
- d) On 10.5.1994 Claimant issued legal notice seeking appointment of arbitrator, to which Respondent replied.
- e) Claims were filed in 2003-2004, i.e. after 19 years when the first claim was made upon the Respondent.

1.4.2 Respondent do not give any date or refer to any document, by which they had disputed either the 11.6.1985 or 6.3.1989 bill.



1.4.3 Claimant has set out in detail their version on limitation in the statement of claim as well as in rejoinder. For the period post 9.12.1989 upto 10.5.1994 they say that they were constantly negotiating with the Respondent as they never said that they would not pay the amount due. They say that this is what they had stated before the Hon'ble Delhi High Court in Suit no. 2065A of 1995. In this regard they have filed along with their rejoinder a copy of the affidavit along with documents filed in the said suit which is marked as "**Annexure R-2 colly**". This affidavit was filed by the same person who has filed affidavit in these proceedings. At paragraph no. 19 of his affidavit dated 14.2.2007 filed in these proceeding, the same deponent reiterates the said version. That not a single question was put to the said deponent during his cross-examination to unsettle the said version. That even when arbitration was invoked on 10.5.1994, by their reply dated 2.6.1994, Respondent did not deny arbitrability of claims as having become barred by limitation. They conveyed that issue of appointment of arbitrator was under consideration. As recorded in order dated 7.3.2003 passed in Suit No. 2065A of 1995 (reproduced in rejoinder), Respondents themselves pointed out to the Hon'ble Court that the suit had become infructuous and the same be dismissed. The suit was accordingly dismissed in terms of the said order.

1.5 What emerges from out of the above discussion is that system was provisionally taken over by the Respondent on 4.8.1986. That bill dated 6.3.1989 was raised within three years of the same. That letter dated 9.12.1989 seeking appointment of arbitrator was not received by the Respondent, hence it was no invocation. That no repudiation of the said bill was made by the Respondent. Parties were under negotiations for settling the said bill/s. That by their reply dated 2.6.1994, Respondent did not deny arbitrability of claims due to limitation. That arbitration started in 1995 was stalled because of stay order dated. 11.9.1995 passed in suit no. 2065A of 1995 filed by Respondent. This got vacated only on 7.3.2003. Upon Respondent having pointed out that its suit had become infructuous, the said suit was dismissed. By virtue of the said order passed in the suit, the once stalled arbitration started once again. As recorded in answer to question no. 19 of respondent witness cross-examination held on 08.05.2007, Respondent had not prepared its final bill as against the bill/s of the Claimant even till that date.

1.6 Facts when placed in the legal perspective, prove that claim is not barred by limitation. Claimant validly raised their claim within three years of the provisional take over of the system. That thereafter there was no denial of the claim. Cause of action for seeking arbitration accrued to them when negotiations failed. That



arbitration started from 1995 itself. It is continuation of the same arbitration with mandate from the Hon'ble High Court as set out in order dated 7.3.2003 passed in Suit no. 2065A of 1995.

1.7 This issue is hence decided in favour of the Claimant and against the Respondent.”

55. A plain reading of the aforesaid extracted portion of the Impugned Award indicates that the learned Arbitral Tribunal, in the first instance, identified and recorded certain foundational facts emerging from the arbitral record. Thereafter, it correctly noted that, for the purposes of determining limitation, it was necessary to ascertain the point at which the cause of action had accrued. The learned Arbitral Tribunal further acknowledged that the applicable limitation period was three years and proceeded to examine the issue in light of several judicial precedents, as well as Section 37(3) of the 1940 Arb Act.

56. The learned Arbitral Tribunal also took note of the defence of the Defendant, particularly its stand that it had not received the Plaintiff's Notice dated 09.12.1989 invoking arbitration. It then considered the pleadings and evidence led by the Plaintiff, including the assertion that the Defendant had not unequivocally denied the Plaintiff's claims and that negotiations between the parties had continued over a period of time.

57. Upon an overall appreciation of the material on record, the learned Arbitral Tribunal summarised its factual findings, most notably, that the system had been provisionally taken over on 04.08.1986; that the bill dated 06.03.1989 was raised within three years thereof; that the Notice dated 09.12.1989 was not received by the Defendant; that there was no express repudiation of the said bill;



that the parties were engaged in negotiations; and that the arbitral proceedings, though initiated in 1995, were stayed and later revived pursuant to Orders of this Court.

58. On the basis of the aforesaid factual and legal analysis, the learned Arbitral Tribunal, in Paragraphs Nos. 1.6 and 1.7 of the Impugned Award concluded that the claims were not barred by limitation. The learned Arbitral Tribunal held that the Plaintiff had validly raised its claims within three years of the provisional takeover of the system; that there was no denial of the claims by the Defendant; that the cause of action for invoking arbitration arose upon failure of negotiations; and that the arbitral proceedings, having commenced in 1995 and subsequently revived, constituted a continuation of the same proceedings. Accordingly, the issue of limitation was decided in favour of the Plaintiff and against the Defendant.

59. However, this court finds that even upon a *prima facie* examination of the reasoning adopted by the learned Arbitral Tribunal, it becomes apparent that the ultimate conclusion is fundamentally flawed. The learned Arbitral Tribunal's finding is primarily predicated on the absence of an express denial by the Defendant, the continuation of negotiations between the parties, and the fact that arbitral proceedings were initiated in 1994-95. It also places reliance on the alleged admission in cross-examination by the official of the Defendant that the Defendant had not prepared a final bill even till the date of the cross-examination. On this basis, the learned Arbitral Tribunal concluded that the claims could not be said to be time-barred.

60. In the considered opinion of this Court, the aforesaid reasoning of the learned Tribunal is unsustainable in law. The mere non-



finalisation of a bill by one party, the issuance of communications, or the existence of alleged negotiations between the parties do not, by themselves, operate to extend or postpone the period of limitation. The learned Arbitral Tribunal itself records that the Plaintiff had issued a Notice dated 09.12.1989 invoking arbitration, *albeit* the same was not received by the Defendant. The very issuance of such a Notice clearly indicates that disputes had arisen between the parties at that stage. It is incongruous to suggest, on the one hand, that no dispute had arisen or that there was no denial, and on the other hand, to acknowledge that the Plaintiff found it necessary to invoke arbitration. In the absence of any cogent material to the contrary, the learned Arbitral Tribunal's inference in this regard is manifestly erroneous.

C. Distinction Between the Crystallisation of a Dispute and the Commencement of Arbitral Proceedings by serving a notice invoking arbitration

61. It is imperative to reiterate and emphasise the clear distinction between the existence or crystallisation of a dispute on the one hand, and the formal commencement of arbitral proceedings on the other.

62. While the service of a notice invoking arbitration may be a statutory requirement for the commencement of arbitral proceedings in terms of Section 37(3) of the 1940 Arb Act, the same is not a *sine qua non* for establishing that a dispute had already arisen between the parties. The existence of a dispute is a matter to be discerned from the conduct of the parties, the nature of the claims raised, and the surrounding circumstances, and does not hinge upon any formal service or receipt of a notice invoking arbitration.



63. In the present case, the factual matrix unmistakably demonstrates that disputes had crystallised between the parties, if not at an earlier stage, then certainly by the time the Plaintiff issued the Notice dated 09.12.1989, invoking arbitration. The very issuance of such a Notice is indicative of the Plaintiff's assertion of claims and the existence of differences requiring adjudication. In this backdrop, the conclusion drawn by the learned Arbitral Tribunal that no crystallised dispute existed between the parties is *ex facie* erroneous and cannot be sustained in law.

64. It is well settled, through a consistent line of judgments of the Hon'ble Supreme Court, that in situations where parties are engaged in prolonged negotiations and no definite or easily identifiable point of accrual of cause of action emerges, the concept of a "*breaking point*" assumes determinative significance. Such a breaking point refers to the stage at which negotiations between the parties fail, the possibility of amicable resolution is exhausted, and the dispute becomes irreconcilable. It is this stage which can legitimately be treated as the point of accrual of cause of action for the purposes of initiating legal or arbitral proceedings.

65. In the present case, the Defendant has contended that, by virtue of the communication dated 21.06.1988, the Plaintiff's additional claims stood rejected and, consequently, the cause of action must be deemed to have accrued on that date. The Plaintiff, however, asserts that notwithstanding the said communication, the parties continued to engage in negotiations over a considerable period, and therefore, the limitation period cannot be computed from 21.06.1988 or from any



proximate date thereafter, as the disputes had not crystallised at that stage.

66. Even assuming, *arguendo*, in favour of the Plaintiff, that the parties were engaged in continued negotiations, it is evident from the factual matrix that such negotiations did not, and in law could not, indefinitely defer the crystallisation of disputes or postpone the accrual of the cause of action.

67. In the present circumstances, it cannot be said that the disputes remained inchoate or incapable of crystallisation beyond a certain point in time. On the contrary, the issuance of the Notice dated 09.12.1989 by the Plaintiff invoking arbitration clearly evidences the existence of a definitive “*breaking point*”, i.e., the stage at which the Plaintiff abandoned the possibility of amicable resolution and elected to seek adjudication of its claims. Thus, at the very least, the disputes must be held to have crystallised, and the cause of action to have accrued, by the date of the said Notice.

68. The Hon’ble Supreme Court has, in a catena of decisions, including *B & T AG v. Union of India*¹³, unequivocally reaffirmed the principle that where prolonged negotiations render it difficult to precisely ascertain the point at which a dispute arises, the breakdown of such negotiations, i.e., the “*breaking point*”, constitutes the determinative moment for the purposes of limitation.

69. The Apex Court in the said decision further held that the mere existence of continued correspondence, exchanges, or negotiations between the parties does not operate to indefinitely postpone the commencement of limitation. Rather, the cause of action must be

¹³ (2024) 5 SCC 358
CS(OS) 549/2009



reckoned from the stage at which a clear breaking point is reached, signifying that the dispute has crystallised and the parties' positions have become irreconcilably opposed. The relevant portion of **B & T AG** (*supra*) reads as follows:

“63. Mookerjee, J. in *Dwijendra Narain Roy v. Joges Chandra De*, 1923 SCC OnLine Cal 214, has explained the true test to determine when a cause of action could be said to have accrued observing as under : (SCC OnLine Cal para 10)

“10. ... The substance of the matter is that time runs when the cause of action accrues and a cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed *Coburn v. Colledge*, (1897) 1 QB 702 (CA); *Gelmini v. Moriggia*, (1913) 2 KB 549. The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief: *Whalley v. Whalley*, (1816) 1 Mer 436: 35 ER 734. The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result.”

(emphasis supplied)

64. “Cause of action” means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. In delivering the judgment of the Board in *Chand Kour v. Partab Singh*, 1888 SCC OnLine PC 14 Lord Watson observed: (SCC OnLine PC)

“... Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the [Ed.: The matter between two asterisks has been emphasised in original.] media [Ed.: The matter between two asterisks has been emphasised in original.] upon which the plaintiff asks the court to arrive at a conclusion in his favour.”

(emphasis supplied)

65. Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is



imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the 1996 Act because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.

66. *Russell on Arbitration* by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the “cause of arbitration” accrued, that is to say, 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. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

“Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.”

Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

67. In *Law of Arbitration* by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) “action” and “cause of arbitration” should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the 1996 Act is governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

68. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with



reference to, the substance, rather than the form of the action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the 1996 Act for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the 1963 Act and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the 1963 Act.

72. 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.”

(emphasis supplied)

70. This position has been further elucidated by a three-Judge Bench of the Hon’ble Supreme Court in *Arif Azim Co. Ltd. v. Aptech Ltd.*¹⁴, wherein the Court has drawn a clear distinction between the limitation period for invoking arbitration and that applicable to the underlying substantive claims.

71. In the said decision, it has been authoritatively held that the cause of action for initiating proceedings arises only when a claim is asserted by one party and is either expressly denied or constructively refused by the other. The Apex Court has further clarified that mere inaction or failure to make payment does not, in itself, give rise to a dispute; however, once such an assertion is met with denial or non-response, the dispute stands crystallised and the cause of action

¹⁴ (2024) 5 SCC 313
CS(OS) 549/2009



accrues. The relevant portion of *Arif Azim (supra)* is reproduced below for ready reference:

“(a) When does the right to apply under Section 11(6) accrue?”

53. It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an Arbitral Tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on the part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.

(b) When does the cause of action arise?

79. We are not impressed with the submission canvassed on behalf of the respondent that the cause of action for raising the claims arose on 1-11-2017 and thus the limitation period for invoking arbitration should commence from the said date. The petitioner has alleged that the respondent received the payment for the course from ICCR on 3-10-2017. However, the perusal of the communication exchanged between the parties indicates that it is only on 28-3-2018 that the right of the petitioner to bring a claim against the respondent could be said to have been crystallised. The position of law is settled that mere failure to pay may not give rise to a cause of action. However, once the applicant has asserted its claim and the respondent has either denied such claim or failed to reply to it, the cause of action will arise after such denial or failure.

80. In *B & T AG v. Union of India, (2024) 5 SCC 358*, three principles of law came to be enunciated by this Court 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 was further emphasised by this Court that it was 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.

81. This Court in *Inder Singh Rekhi v. DDA, (1988) 2 SCC 338*, held as follows: (SCC p. 340, para 4)

“4. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an



arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by the respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28-2-1983 and there was non-payment, the cause of action arose from that date, that is to say, 28-2-1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R.S. Bachawat, 1st Edn. p. 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.”

(emphasis supplied)

82. In *Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.*, (2020) 14 SCC 643, this Court held thus: (SCC p. 652, paras 28-29)

“28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be



excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.

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.”

(emphasis supplied)

(c) When is arbitration deemed to have commenced?

88. Section 21 of the 1996 Act provides that the arbitral proceedings in relation to a dispute commence when a notice invoking arbitration is sent by the claimant to the other party:

“21. Commencement of arbitral proceedings. - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

89. In *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*, (2004) 7 SCC 288, it was observed thus: (SCC pp. 301-302 & 307, paras 26-27, 29 & 49)

“26. The commencement of an arbitration proceeding for the purpose of applicability of the provisions of the Indian Limitation Act is of great significance. Even Section 43(1) of the 1996 Act provides that the Limitation Act, 1963



shall apply to the arbitration as it applies to proceedings in court. Sub-section (2) thereof provides that for the purpose of the said section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21.

27. Article 21 of the Model Law which was modelled on Article 3 of the UNCITRAL Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute.

29. *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 a notice requiring the appointment of an arbitrator. This indeed is relatable to the other purposes also, as, for example, see Section 29(2) of the (English) Arbitration Act, 1950.*

49. *Section 21 of the 1996 Act, as noticed hereinbefore, provides as to when the arbitral proceedings would be deemed to have commenced. Section 21 although may be construed to be laying down a provision for the purpose of the said Act but the same must be given its full effect having regard to the fact that the repeal and saving clause is also contained therein. Section 21 of the Act must, therefore, be construed having regard to Section 85(2)(a) of the 1996 Act. Once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding.”*

(emphasis supplied)

90. Similarly, in ***BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738***, it was held by this Court thus: (SCC p. 766, para 51)

“51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [***S.S. Rathore v. State of M.P., (1989) 4 SCC 582; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185***] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not



exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that: ‘where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it’. *There must be a clear notice invoking arbitration setting out the “particular dispute”* [Section 21 of the Arbitration and Conciliation Act, 1996.] *(including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.”*

....”
(*emphasis supplied*)

72. Importantly, the Hon’ble Supreme Court in *Arif Azim* (*supra*) has reiterated that the accrual of a cause of action cannot be indefinitely postponed by repeated correspondence, representations, or ongoing negotiations. The Apex Court emphasised the necessity of identifying the “*breaking point*”, the stage at which any reasonable party would have ceased efforts at amicable settlement. Such a “*breaking point*” alone constitutes the starting point of limitation. Consequently, once this stage is reached, whether by an express rejection, a clear failure to respond, or any conduct demonstrating irreconcilable differences, the limitation period begins to run, and any subsequent exchanges between the parties cannot arrest or extend it, unless the same is in consonance with the statutory requirements.

73. In the facts of the present case, at the cost of repetition, it can safely be concluded that if a definitive “*breaking point*” had not arisen prior thereto, it most certainly occurred, at the latest, on the date when the Notice invoking arbitration dated 08.12.1989 was issued by the Plaintiff.

74. This conclusion holds irrespective of the question whether the said Notice was ultimately received by the Defendant, inasmuch as the



act of issuing the Notice itself unequivocally evidences that the Plaintiff had, by that stage, abandoned the possibility of amicable resolution and elected to seek adjudication of its claims, thereby signifying crystallisation of the disputes between the parties.

D. Shifting and Self-Serving Positions Adopted by Both Parties at Different Stages of the Proceedings, Resulting in Inconsistencies

75. At this stage, a crucial and definite determinative issue arises for consideration. The learned Arbitral Tribunal has returned a finding, on the basis of the material before it, that the letter dated 08.12.1989 invoking arbitration was not delivered to the Defendant, and consequently, arbitral proceedings in terms of Section 37(3) of the 1940 Arb Act could not be said to have commenced on that date.

76. However, during the course of arguments before this Court on 04.02.2026, both parties addressed elaborate and vehement submissions on the question of service of the said Notice.

77. On that day, before this Court, the Plaintiff sought to contend that the Notice dated 08.12.1989 had, in fact, been duly served upon the Defendant, and therefore, arbitral proceedings must be deemed to have commenced at that stage; consequently, since such invocation was within three years from the accrual of cause of action, even if reckoned from 1987 or 1988, as asserted by the Defendant, the claims would fall within limitation.

78. Conversely, the Defendant contended that the said Notice was never received, and therefore, arbitration did not commence until 10.05.1994, when a subsequent Notice invoking arbitration was admittedly served to the Defendant and replied to on 02.06.1994. On



this premise, it was urged that the invocation of arbitration occurred well beyond the prescribed period of limitation. In this backdrop, the issue as to whether the letter dated 08.12.1989 was, in fact, delivered to the Defendant assumes pivotal significance.

79. It is pertinent to note that while adjudicating Issue No. 1 pertaining to limitation, the learned Arbitral Tribunal recorded a finding that the letter dated 08.12.1989 had not been delivered to the Defendant. Notwithstanding this finding, the learned Arbitral Tribunal, on an independent line of reasoning, ultimately concluded that the claims were within limitation.

80. Before proceeding further on this aspect, this Court considers it appropriate to examine the pleadings of the parties in the present proceedings, particularly in relation to the issue of service of the Plaintiff's Notice dated 09.12.1989.

81. In this regard, it is necessary to first advert to the objections filed by the Defendant, being IA No. 5570/2009, under Sections 30 and 33 of the 1940 Arb Act, wherein the Defendant has challenged the Impugned Award in the present proceeding.

82. A perusal of the relevant averments made in the above-said IA reveals that the Defendant, while setting out its case, proceeded on the footing that the Plaintiff had invoked arbitration *vide* letter dated 09.12.1989 and further structured its objections around the consequences flowing from such invocation, including the alleged failure of the Plaintiff to take steps for the constitution of the learned Arbitral Tribunal within the prescribed time. For ready reference, the relevant portion of the said IA is reproduced hereunder:

“5. That the brief facts leading to the filing of the present application are as under:



iv. Since the Claimant's claims were not conceded to by the respondent NTPC, the Claimant vide its letter dated 09.12.1989 (Exh.C-253) invoked arbitration and appointed Mr. M.M. Sharma, as its nominee arbitrator and requested the Respondent to nominate its nominee arbitrator within 15 days of the receipt of the said letter in terms of clauses 25.0 and 26.0 of the General Conditions of Contract and the provisions of Indian Arbitration Act, 1940. However, no appointment of Arbitrator was made by NTPC. Copy of letter dated 9.12.1989 is annexed herewith as ANNEXURE-R-6.

v. As per clause 26.6.1.1 of GCC, in case either of the parties failed to appoint its arbitrator within 60 days after receipt of a notice from the other party invoking the arbitration clause, the President of Institute of Engineer, India, had the power to appoint the arbitrator at the request of the other party. However, the Claimant/contractor also did not take any further step in this regard and failed to approach the Institute of Engineer for appointment of Arbitrators and constitution of the Arbitral Tribunal.

vi. That the right of the claimant to seek appointment of nominee arbitrator of respondent arose on 9.02.1990 and finally expired on 9.02.2993 and thus not only the claimant's right to get the arbitral tribunal got extinguished by lapse of time and the claims in itself also became stale. The claimant almost five years after the invocation of the Arbitration Clause, issued a Legal Notice dated 10.05.1994 (Exh C-261) to the Respondent requiring the Respondent to appoint its nominee Arbitrator, Copy of the legal notice dated 10.05.1994 is annexed herewith as ANNEUXURE-R-7. The said Notice was replied to by the Respondent vide its letter dated 02.06.1994 (Exh C-262) thereby intimating the Respondent that the issue is under consideration and the Claimant shall be communicated about the same in due course. Copy of the reply letter dated 2.06.1994 is annexed herewith as ANNEXURE-R-8. In fact during this entire period from 9.12.1990 to 10.05.1994 there is no material placed on record or any communication to establish that the parties were negotiating or intending to arrive at any amicable settlement with regards to the claims of the claimant apart from bald statement of the claimant that they were constantly negotiating with the respondent.

vii. Finally on 24.11.1994, the Claimant approached the President, Institution of Engineers, Calcutta, in terms of Clause 26 of the Agreement, requesting him to appoint two arbitrators i.e., one for the NTPC and the third as nominee of the President, Institution of Engineers India to act as the umpire. The said President vide letter



dated 2.6.95 appointed one Sri D.B.Chachad as arbitrator on behalf of NTPC.

FOUNDATIONS

D. Because the Majority Arbitrators erred in law in not appreciating that the onus to prove that the claims as well as the appointment of arbitrator is well within the prescribed time is upon the claimant. It has come on record that the respondent having taken over the project on 4.08.1986 and further the respondent having repudiated the claims vide letter dated 21.06.1988, the disputes and differences between the parties had arisen and the cause of action for invocation of arbitration had arisen and started to run and in these circumstances, the claimant reiterated its claim vide its letter dated 6.03.1989 which were not conceded and hence the claimant invoked arbitration vide letter dated 9.12.1989. The cause of action for appointment of tribunal had started to run on the expiry of 60 days ie. on 9.02.1990 and could not have been postponed in any circumstance when according to the claimant respondent did not appoint their nominee arbitrator. It is further submitted that there cannot be waiver of notice dated 9.12.1989 or postponement of date of accrual of cause of action on account of respondent's alleged denial as to its receipt even though the said finding of Majority Arbitrators that the letter dated 9.12.1989 seeking the appointment of arbitrator was not received by the respondents is perverse and is extraneous to the evidences available on record and hence the same is liable to be set aside.

E. Because the Ld. Majority Arbitrators have failed to appreciate that the Arbitration Clause as contained in the agreement between the parties was invoked by the claimant on 9.12.1989. However, no nominee arbitrator was appointed by the respondent and as such the claimant got a right to approach the institute of Engineers for such appointment on the expiry of 60 days from the receipt of the notice of invocation. The claimant chose to sleep over its rights and did not pursue the matter any further for over four and half years thereby the right of the claimant seeking the appointment of arbitrator became time barred

F. Because the Majority Arbitrators has failed to appreciate that on 10.5.1994 when the claimant once again sought to invoke the arbitration clause as contained in the agreement between the parties the claims had already become time barred by virtue of laps of over five years from the date of accrual of cause of action in favour of the claimant.



G. Because the cause for arbitration had already accrued before 09.12.89 and the cause for making an application to the President, Institution of Engineers, India, accrued on the expiry of sixty days from 9.12.89 i.e., on 06.02.90. The period of limitation for such an application is three years (Art. 137 of Limitation Act) and the claimant allowed it to expire. The one sided volley of letters was thus of no avail. As observed by the Hon'ble Supreme Court in Major Inder Singh Vs. DDA, 1988 (2) Arb. Law Reporter 270, a party cannot postpone the accrual of cause of action by writing reminders or sending reminders. And above all the period of limitation for approaching the President having begun to run on 06.02.90 nothing could stop it from running.

J. Because the majority arbitrator mis-conducted themselves and the proceedings by not appreciating that the correspondence between the parties and especially the letter dated 21.06.1988 of the respondent show that differences/disputes as regards the claims of the contractor had already arisen which fact is further substantiated by the letter of invocation of arbitration dated 9.12.1989.

K. Because the Learned Majority Arbitrator failed to appreciate that the cause of action for invoking arbitration and for appointment of arbitrators is different and is governed by different articles of the Schedule to the Limitation Act. For invoking arbitration, the same is governed by Article 18 i.e. when the work is done which is 4.08.1987 in the present case and for appointment of arbitrator, the same is governed by Article 137 Le. when the right to apply accrues which in the present case is 6.02.1990 (on the expiry of 60 days from the date of invocation of arbitration). Thus, the contractor failed to establish that any steps were taken to constitute arbitral tribunal till 10.05.1994, on which date it sought to refer stale claims to a tribunal which had no jurisdiction and sanctity as their appointment in itself had become barred by time. However, the minority award of Justice .M.C. Agarwal (Retd.) was completely right in holding the claims as well as appointment being barred by time.

....."

(emphasis supplied)

83. Significantly, a bare reading of the averments made *via* said objections indicates that the Defendant did not, in clear or categorical terms, deny receipt of the letter dated 09.12.1989. On the contrary, several averments appear to proceed on the implicit premise that such



Notice had been issued and had triggered the subsequent sequence of events.

84. Indeed, the Defendant went to the extent of assailing the finding of the learned Arbitral Tribunal that the said Notice had not been received, thereby adopting a stance which is not entirely consistent with its present contentions, which were made by the Defendant before this Court during the hearing on 04.02.2026, that the Plaintiff's Notice dated 08.12.1989 was never delivered to the Defendant.

85. This incongruity demonstrates that the position now canvassed by the Defendant, during oral arguments, is not in consonance with its pleadings on record.

86. It is equally necessary to examine the stand taken by the Plaintiff, particularly in its **Reply to the said IA No. 5570/2009**.

87. The Plaintiff, in its pleadings filed in response to IA No. 5570/2009, while controverting the averments made by the Defendant therein, repeatedly asserted that, even according to the Defendant's own case, the letter dated 09.12.1989 had never been received.

88. The Plaintiff, in fact, repeatedly relied upon the aforesaid position and went to the extent of asserting that the contractual mechanism for appointment of arbitrators, which presupposed receipt of the Notice invoking arbitration, had itself never been triggered. For ready reference, the relevant portion of the said IA is reproduced hereunder:

"B. Parawise reply

5.(iv) Save and except to admit only what are matters of record, contents of rest of paragraph no. 5 (iv) of the Objections, which are not matters of record and which refer to documents which were not before the Ld. Arbitral tribunal, are denied. Defendant is put to strict proof of its averments. In order to avoid duplication of



narration already made, Applicant seeks liberty to refer to and reply upon its pleadings, documents, evidence, arbitral proceedings and findings made on facts and law in the arbitral award given by the majority.

It is submitted that as per Defendant's own version, it did not receive that letter-dated 9.12.1989.

5.(v) Save and except to admit only what are matters of record, contents of rest of paragraph no. 5 (v) of the Objections, which are not matters of record and which refer to documents which were not before the Ld. Arbitral tribunal, are denied. Defendant is put to strict proof of its averments. In order to avoid duplication of narration already made, Applicant seeks liberty to refer to and reply upon its pleadings, documents, evidence, arbitral proceedings and findings made on facts and law in the arbitral award given by the majority.

It is submitted that as per Defendant's own version, it did not receive that letter-dated 9.12.1989, hence clause 26.6.1.1 of the GCC did come into play. It presupposes receipt of such notice. It reads as under:

"26.6.1.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the owner and the third to be named by the President of the Institution of Engineers, India, if either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the arbitration clause, the President of the Institution of Engineer, India, shall have the power at the request of either of the parties, to appoint the arbitrator. A certified copy of the said President making such an appointment shall be furnished to both the parties."

In view of the requirement of the said sub clause, all the alleged averments of the Defendant in the instant paragraph are de horse their own document on record.

5. (vi) Save and except to admit only what are matters of record, contents of rest of. paragraph no. 5 (vi) of the Objections, which are not matters of record and which refer to documents which were not before the Ld. Arbitral tribunal, are denied. Defendant is put to strict proof of its averments. In order to avoid duplication of narration already made, Applicant seeks liberty to refer to and reply upon its pleadings, documents, evidence, arbitral proceedings and findings made on facts and law in the arbitral award given by the majority.

In order to avoid duplication, Applicant craves liberty to refer to reply made hereinabove to paragraph no. 5(v). It is additionally submitted that no limitation as alleged started from any alleged date



as has been suggested. It is denied that parties were not negotiating or there are no material placed on record in this regard. Applicant has filed copy of detailed affidavit supported by documents along with its rejoinder. This affidavit was filed by the Applicant in the suit no. 2065A of 1995. The said version was again reiterated in these proceedings by the same person who was negotiating the said payments by way of his affidavit in evidence. No question was put to him to unsettle his version. Even Defendant's letter dated 2.6.1994 issued in response to letter-dated 10.5.1994, which invoked arbitration, did not record their instant stand. They did not object to the said invocation and agreed to appoint their nominee. Further, rather than filing suit under section 33 of the Act, they chose to file suit no. 2065A of 1995 only under section 5, 11 and 12.

D, E, F, G.

Contents of Ground D, E, F, G of the Objection are denied. The alleged version set out in the instant objection was not even spelt out by the Defendant in its reply to the statement of claim. As is stated in their reply to statement of claim, Defendant state that Applicant raised first bill on 11.6.1985 and thereafter on 6.3.1989. Going beyond that, as is recorded in the cross examination of defendant's witness dated 8.5.2007 that even on that date Defendant had not prepared their final bill as against the final bill of the Applicant. Without prejudice, in any case, bill dated 6.3.1989 was within three years of 4.8.1986, when defendant took over the system from the Applicant. Still even otherwise, bills dated 11.6.1986 and 6.3.1989 were identical and dealt with, inter alia, admitted extra items consumed and price variation thereon. It is denied that any alleged cause of action started to run from 9.12.1989 or that arbitration was invoked on that date as alleged or at all. Clear findings of facts have been given in the Award by the Majority where Ld. Arbitrators record that Defendant stated before Hon'ble High Court in OPM No. 16 of 2005 that they had not received the communication dated 9.12.1989. That in their admission / denial before the arbitral tribunal, they denied having received this letter. Unless Defendant first withdraws its pleading and document supported by affidavit, it is wrong to suggest that the findings of the Ld. Arbitrator are wrong or perverse. In terms of the referred to clause, time to appoint arbitral tribunal would run only when such letter has first been received by the other party and such party refused or omitted to act. Here such party did not receive in the first place. It is denied that any finding of facts is de horse the evidence on record. It is denied, therefore, that as on 10.5.1994, claims had become time barred as alleged or at all. It is denied that Major Inder Singh Rekhi judgment at all helps Defendant to put across the alleged point. This very judgment says that when other



party did not finalize the bill, how can it say that cause of action had arisen. In this case, Defendant's witness admits that even till date of his cross-examination in the arbitral proceedings, Defendant had not prepared their final bill based on the their own measurement. Defendant is put to strict proof of all its alleged averments.

K. Contents of Ground K of the Objection are denied. It is denied that Article 18 of schedule to the Limitation Act applies either to the facts of the case or in the manner Defendant seeking it to. Defendant is put to strict proof thereof. Without prejudice, it was never a case of defendant before the arbitral tribunal, which it is seeking to project now. Admitted facts of the case is that Defendant took over the system on 4.8.1986, final bill by Applicant was raised on 6.3.1989, this bill was never disputed, Defendant are on record to state that letter dated 9.12.1989 was not received by them, arbitration was invoked on 10.5.1994 to which Defendant responded by their letter dated 2.6.1994 stating that they were in the process of nominating their arbitrator, as on 8.5.2007 during cross examination Defendant witness admits that Defendant had till date not prepared any final bill. Without prejudice, while discussing issue no. 1 dealing with limitation, Ld. Arbitrators have devoted as many as 14 pages. Save and except to make some vague proposition, Defendants have not been able to point out where such analysis of fact or law was wrong.

....."

(emphasis supplied)

89. A careful reading of the Plaintiff's reply to IA No. 5570/2009 thus reveals that the Plaintiff itself had, in its pleadings, unequivocally endorsed the position that the Defendant had not received the Notice dated 09.12.1989. This stand of the Plaintiff has not been confined to a single pleading but exists at numerous places.

90. Although written submissions do not strictly constitute pleadings, it is nonetheless relevant to note that even in its Written Submissions filed prior to the Judgment dated 12.03.2019 passed by the learned Coordinate Bench in the present case, in the earlier round of the adjudication, the Plaintiff reiterated the same position, *namely*, that the Defendant had not received the said Notice.



91. It is also pertinent to note that substantially similar pleadings had been adopted by the parties in CS(OS) No. 72/2009, which was filed challenging the same Impugned Award and ultimately came to be disposed of on technical grounds. It is pertinent to note that the entire record of CS(OS) No. 72/2009 already forms part of the present proceedings.

92. As noted hereinabove in relation to the inconsistent stands adopted by the Defendant, it is evident that the position taken by the Plaintiff in its pleadings also stands in stark contrast to the submissions advanced on behalf of the Plaintiff during the course of arguments before this Court on 04.02.2026. During the hearing, a vehement attempt was made by the Plaintiff to contend that the Notice dated 09.12.1989 had, in fact, been duly served upon the Defendant.

93. Such a volte-face is clearly inconsistent with the Plaintiff's own pleadings forming part of the record.

94. The cumulative effect of the above analyses is that both parties have, at different stages of the proceedings, taken inconsistent and mutually contradictory positions on the question of receipt of the Notice dated 09.12.1989. While their written Pleadings indicate one position, their oral submissions before this Court on 04.02.2026 reflect a diametrically opposite stance. Such conduct, whereby parties approbate and reprobate to suit their immediate convenience, cannot be countenanced.

95. The underlying reason for such shifting and self-serving stands adopted by the parties is also apparent from the record.

96. After the learned Arbitral Tribunal held that the substantive claims advanced by the Plaintiff were within the prescribed period of



limitation, the Defendant, while filing its objections by way of *IA No. 5570/2009* before this Court, chose to structure its challenge primarily around the issue of delay in the reference of disputes/claims to arbitration. For the purposes of advancing such a contention, it was strategically advantageous for the Defendant not to seriously and categorically dispute either the issuance or the service of the Notice dated 09.12.1989 by the Plaintiff upon the Defendant. Correspondingly, the Plaintiff, while responding to the said objections, adopted a position substantially aligned with that stance.

97. However, the position materially changed once the dispute travelled to the Hon'ble Supreme Court after the decisions rendered by the learned Coordinate Bench and the Division Bench.

98. The Hon'ble Supreme Court, *vide* Order dated 18.12.2024, remanded the matter to this Court while leaving all issues concerning the dispute open for consideration, except the issue relating to the delay in the reference of disputes to arbitration.

99. Consequent thereto, both parties altered their respective stands concerning the service of the Plaintiff's Notice dated 09.12.1989.

100. After the remand by the Hon'ble Supreme Court, since this Court was no longer required to adjudicate upon the aspect of delay in the reference of disputes, the controversy concerning limitation assumed significance from an entirely different perspective, *namely*, whether the substantive claims themselves were barred by limitation.

101. In that backdrop, asserting due service of the Notice dated 09.12.1989 became advantageous to the Plaintiff, whereas disputing such service became beneficial to the Defendant. The Defendant, on the basis of alleged non-service of the said Notice, sought to contend



that the arbitral proceedings had not been validly invoked within the prescribed limitation period and, consequently, the substantive claims themselves were barred by limitation. On the other hand, the Plaintiff opposed the said contention by asserting that the Notice dated 09.12.1989 had in fact been duly served upon the Defendant and, therefore, the arbitration proceedings stood invoked within three years from the accrual of disputes in terms of Section 37(3) of the 1940 Arb Act, thereby keeping the substantive claims within limitation.

102. It is in these circumstances that both parties chose to take a complete volte-face from the pleadings previously filed by them in the present case and advanced submissions before this Court, on 04.02.2026, that were materially inconsistent with their earlier stands already forming part of the record.

E. Nature of the Pleadings in the Defendant's Objections and the Plaintiff's Response Thereto Being Contrary to the Principles of Pleadings Mandated in Law

103. Besides the inconsistencies between the Pleadings of the parties and the oral submissions advanced before this Court on 04.02.2026, this Court also finds that the Pleadings contained in the Defendant's objections to the Impugned Award and the Plaintiff's response thereto do not conform to the settled principles governing pleadings under law.

104. The manner in which the Pleadings have been made by both parties, particularly in relation to material and foundational facts,



reflects a lack of precision, clarity, and consistency as mandated under the **Code of Civil Procedure, 1908**¹⁵.

105. It is a settled principle of law that the rules relating to pleadings, as embodied in the CPC, are equally applicable to applications and proceedings of a civil nature, unless expressly excluded either by statute or by necessary implication.

106. It is necessary to note here that the principles governing pleadings, especially for the proceedings of the present nature, are not mere procedural formalities, but are intended to ensure certainty, fairness, and clarity in adjudication by requiring parties to clearly disclose the factual basis of their claims and defences.

107. Consequently, the principles contained in Orders VI to VIII of the CPC would govern the pleadings advanced by the Defendant while objecting to the Impugned Award in IA No. 5570/2009, as well as the Plaintiff's Reply filed in response thereto.

108. The Pleadings of both parties were, therefore, required to clearly and specifically disclose the material facts relied upon by them, particularly in relation to disputed foundational issues having a direct bearing on limitation, maintainability, and the validity of the arbitral proceedings. Equally, any denial to the averments of the opposite party was required to be specific and unambiguous, and not vague, evasive, or capable of multiple interpretations.

109. The relevant provisions of Orders VI to VIII of the CPC governing the principles of pleadings, which are applicable in the facts and circumstances of the present case, are extracted herein below for ready reference:

¹⁵ CPC



“

ORDER VI
Pleadings generally

2. Pleading to state material facts and not evidence. - (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

7. Departure. - No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

ORDER VII
Plaint

1. Particulars to be contained in plaint. - The plaint shall contain the following particulars: -

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed, or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

8. Relief founded on separate grounds.- Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

ORDER VIII
Written statement, set-off and counter-claim



3. Denial to be specific. - It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive-denial. - Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial. – (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.”

(emphasis supplied)

110. As extracted in the preceding head of this judgment, a bare perusal of the Pleadings contained in the said IA and the Reply filed thereto makes it *ex facie* evident that the averments made by the parties do not strictly conform to the mandate of the CPC concerning pleadings. The Pleadings, read as a whole, reveal ambiguity and inconsistency on material factual issues which were required to be specifically and unequivocally pleaded.



111. This becomes particularly apparent in relation to the most crucial disputed question of fact arising in the present case, *namely*, the issue concerning the alleged service of the Plaintiff's Notice dated 09.12.1989, purportedly invoking arbitration in terms of Section 37(3) of the 1940 Arb Act. The said issue constitutes a foundational fact having a direct bearing on the question whether the arbitral proceedings were validly invoked within the prescribed period of limitation.

112. However, the pleadings of the parties on the aforesaid factual issue, instead of containing clear, categorical, and specific assertions or denials, disclose vague and equivocal averments. The parties have not dealt with the said issue concerning the issuance and service of the Notice dated 09.12.1989 with the degree of precision mandated under the CPC.

113. Such Pleadings clearly fall short of the standards contemplated under the law governing pleadings, which requires certainty, specificity, consistency, and clarity in relation to material factual assertions, particularly where such facts have a direct bearing on issues relating to limitation, maintainability, and jurisdiction.

F. Alteration of Averments in Pleadings Must Be Strictly in Accordance with Law

114. As noted hereinabove, the pleadings advanced by the Defendant, while assailing the Impugned Award in *IA No. 5570/2009*, as also the Pleadings contained in the Plaintiff's Reply filed in response thereto, are found to be materially at variance with the



submissions subsequently advanced on behalf of the respective parties during the course of oral hearing before this Court.

115. It is trite principle of law that parties are bound by their pleadings and cannot travel beyond the scope thereof. The purpose of pleadings is to delineate with precision the case set up by each party so as to afford the opposite side a fair opportunity of meeting the same. Consequently, no party can be permitted to introduce, at the stage of oral arguments, a factual contention or legal foundation inconsistent with, contrary to, or beyond the case originally pleaded. In the event of any inconsistency between oral submissions and the written pleadings on record, the pleadings must necessarily prevail, since the adjudicatory process is required to proceed on the basis of the case formally pleaded before the Court and not on shifting or fluctuating stands adopted during the course of arguments.

116. It is equally well settled that although a party may, in an appropriate case, alter, modify, or clarify its stand, such alteration can only be effected in the manner recognised by law, *namely*, through a duly permitted amendment of pleadings. Order VI Rule 7 of the CPC expressly prohibits a party from departing from its earlier pleadings or introducing inconsistent allegations except by way of amendment. The said provision reads as follows:

“7. Departure. - No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.”

117. The object underlying the aforesaid provision is to ensure certainty, consistency, and fairness in the adjudicatory process.



118. In the present case, admittedly, neither party has sought any amendment of its Pleadings in conformity with the mandate of Order VI Rule 7 of the CPC. In the absence thereof, the parties cannot be permitted to rely upon factual assertions that are inconsistent with their original Pleadings. Accordingly, both parties remain bound by the Pleadings as filed before this Court, and the disputes arising herein are liable to be examined strictly within the confines thereof.

119. At this stage, it is also pertinent to note that the nature and extent of judicial scrutiny exercisable by a Court under the 1940 Arb Act is materially wider than the limited supervisory jurisdiction contemplated under the 1996 Arb Act. Proceedings arising out of awards rendered under the 1940 Arb Act are not circumscribed by the narrow grounds of interference now embodied under Section 34 of the 1996 Arb Act.

120. Rather, under the scheme of the 1940 Arb Act, read conjointly with the applicable provisions of the CPC, the Court possesses comparatively broader authority to independently scrutinise the findings and conclusions recorded by the learned Arbitral Tribunal, including the legality and sustainability of the award on facts and law. Consequently, while examining the present matter arising under the 1940 Arb Act, this Court is fully empowered to assess the rival pleadings, scrutinise the findings returned by the learned Arbitral Tribunal, and determine the issues arising herein on the basis of the material properly forming part of the record in accordance with law.

G. Determination of Limitation in Respect of the Plaintiff's Substantive Claims Solely on the Basis of the Pleadings Before



This Court, Irrespective of Any Inconsistent Positions Adopted by the Parties

121. At this stage, the only substantive and determinative issue that survives for consideration on merits is whether the substantive claims raised by the Plaintiff before the learned Arbitral Tribunal were within the prescribed period of limitation.

122. Since the findings returned by the learned Arbitral Tribunal on this issue are found to be erroneous and legally unsustainable, this Court is duty-bound to independently examine and determine the same, strictly on the basis of the Pleadings of the parties, the material and evidence available on record, and the settled principles of law governing limitation under the 1940 Arb Act, read with the provisions of the Limitation Act.

123. Upon a careful, comprehensive, and holistic consideration of the factual matrix emerging from the Pleadings filed by the parties before this Court, the scrutiny undertaken in the preceding portions of the present judgment, and the documents and evidence forming part of the record, the following material aspects emerge with sufficient clarity:

- (i). The present adjudication is confined solely to the question of limitation in respect of the Plaintiff's substantive claims, which formed the subject matter of adjudication before the learned Arbitral Tribunal.
- (ii). The conclusion returned by the learned Arbitral Tribunal that the Plaintiff's substantive claims were within the prescribed period of limitation is, upon judicial scrutiny, found to be legally unsustainable and erroneous. Consequently, this Court is



required to independently re-examine the issue in light of the Pleadings before this Court and the governing legal principles applicable thereto.

- (iii). The scope of examination exercisable by this Court in proceedings arising under the 1940 Arb Act, read with the CPC, is comparatively wider and more substantive than the limited supervisory jurisdiction contemplated under the 1996 Arb Act. Accordingly, this Court is competent to independently scrutinize the findings recorded by the learned Tribunal, particularly where such findings pertain to limitation and jurisdictional legality.
- (iv). The parties remain bound by their pleadings and cannot be permitted to travel beyond the same except in accordance with the law. Any departure from the original pleadings could only be effected through amendment in the manner known to the law. In the event of inconsistency between oral submissions and written pleadings, the pleadings on record must prevail.
- (v). It is a settled principle of law that once a claimant asserts its claims and the opposite party either expressly repudiates the same or fails to respond within a reasonable period, the cause of action accrues at that stage. Such accrual cannot be postponed indefinitely merely because the claimant continues issuing reminders or exchanging correspondence. In determining the limitation in arbitration matters, the Court is required to identify the “*breaking point*”, namely, the stage at which a reasonable party would cease to expect amicable resolution and would reasonably contemplate initiation of arbitral proceedings. Such



a “*breaking point*” constitutes the point from which the limitation begins to run.

- (vi). Had the Plaintiff succeeded in establishing due service of its Notice dated 09.12.1989 upon the Defendant, the said Notice would have constituted a valid invocation of arbitration within the meaning of Section 37(3) of the 1940 Arb Act, and the issue of limitation may not have arisen in the present form. However, since the factum of service of the said Notice has itself become the central and determinative controversy in the present proceedings, the same necessarily falls for adjudication strictly in accordance with law and the evidentiary material on record.
- (vii). Since the finding of the learned Arbitral Tribunal on limitation has been found to be erroneous, and the present proceedings arise in the context of making the Impugned Award the Rule of the Court, the burden squarely rests upon the Plaintiff, being the beneficiary under the Impugned Award, to satisfy this Court that the substantive claims raised before the learned Arbitral Tribunal were within the prescribed period of limitation reckoned from the accrual of cause of action.
- (viii). Upon scrutiny of the Pleadings, particularly the Reply filed by the Plaintiff to *IA No. 5570/2009*, this Court finds that the Plaintiff has failed to place cogent and affirmative material establishing service of the Notice dated 09.12.1989 upon the Defendant. Rather than furnishing specific particulars and positive evidence demonstrating due service, the Pleadings proceed on vague and generalized assertions. Significantly, there is even no categorical and unequivocal denial in respect of



the service of the said Notice. Therefore, having regard to the mandate of Order VIII Rules 3, 4, and 5(1) of the CPC, the absence of specific and necessary denial assumes legal significance and supports the inference that the Plaintiff has failed to establish lawful service of the Notice dated 09.12.1989 upon the Defendant. As a necessary corollary, the said Notice cannot be treated as having validly invoked arbitration under Section 37(3) of the 1940 Arb Act.

- (ix). It is equally well settled that the initial burden squarely rested upon the Plaintiff to independently establish, on the strength of its own Pleadings, evidence, and material placed before this Court, that the substantive claims raised before the learned Arbitral Tribunal were within the prescribed period of limitation. The Plaintiff cannot discharge such burden merely by relying upon any alleged weaknesses, omissions, inconsistencies, or deficiencies in the Defendant's case.
- (x). In the considered opinion of this Court, the Plaintiff has miserably failed to discharge the burden cast upon it in law with respect to establishing valid service of the Notice dated 09.12.1989 upon the Defendant.
- (xi). Proceeding, therefore, on a *demurrer* and adopting the best possible view in favour of the Plaintiff, it becomes evident that, if not earlier, the disputes between the parties had unquestionably crystallized by the time the Plaintiff issued the Notice dated 09.12.1989 seeking the invocation of arbitration. For the limited purpose of determining the stage at which the disputes had crystallized and the "*breaking point*" had arisen



between the parties, it is not necessary that the said Notice must also have been duly served upon the Defendant. The very issuance of such Notice by the Plaintiff itself unequivocally demonstrates that, by that stage, the disputes had attained finality from the Plaintiff's own perspective and that the possibility of amicable settlement was no longer reasonably contemplated.

- (xii). It is an undisputed fact that the Plaintiff thereafter issued a fresh Notice dated 10.05.1994, invoking arbitration. Unlike the earlier Notice, the said Notice dated 10.05.1994 was admittedly received by the Defendant, who also responded thereto *vide* Reply dated 02.06.1994.
- (xiii). Consequently, it stands established that the arbitral proceedings, in the eyes of law, can only be said to have been validly invoked upon and from the exchange of correspondence culminating in the Defendant's acknowledged receipt of the Plaintiff's Notice dated 10.05.1994 invoking arbitration, followed by the Defendant's Reply thereto dated 02.06.1994. It is only at this stage that the statutory requirement contemplated under Section 37(3) of the 1940 Arb Act can be said to have been duly satisfied.
- (xiv). In this backdrop, once the cause of action is taken to have arisen, at the latest, on 09.12.1989, being the identified "*breaking point*", and the valid invocation of arbitration occurred only in May-June 1994 within the meaning of Section 37(3) of the 1940 Arb Act, there exists an intervening gap of more than four and a half years. Such a delay is clearly beyond



the prescribed period of limitation of three years. Consequently, the substantive claims raised by the Plaintiff before the learned Arbitral Tribunal were *ex facie* barred by limitation.

124. The last residual question which comes for consideration of this Court is whether there exists any material on record capable of legally extending, suspending, or postponing the aforesaid “*breaking point*” identified as 09.12.1989.

125. Upon careful consideration of the submissions advanced on behalf of the Plaintiff, this Court finds that no such legally sustainable material has been brought to its notice by either of the parties.

126. This Court has, nevertheless, independently undertaken a comprehensive scrutiny of the entire record, including the arbitral proceedings and the contemporaneous correspondence exchanged between the parties during the relevant period. However, such examination does not disclose the existence of any document, acknowledgment, admission, or legally recognizable circumstance during the period between 09.12.1989 and 10.05.1994 which could operate to extend, suspend, or save limitation within the meaning of the Limitation Act.

127. It is well settled that extension of limitation is not a matter of inference or equitable consideration but must strictly satisfy the statutory requirements contemplated under law. The Limitation Act recognizes only specific circumstances for extension or renewal of limitation, such as a clear and unambiguous acknowledgment of liability in writing within the meaning of Section 18 of the Limitation Act or any other circumstance expressly recognized by statute. Mere exchange of correspondence, unilateral communications, repeated



reminders, or vague assertions lacking acknowledgment of liability cannot be elevated to the status of a legally valid acknowledgment so as to arrest or renew the running of limitation.

128. In the present case, although there are certain communications during the intervening period, a closer scrutiny thereof reveals that such communications are omnibus and generalized in nature and do not contain any acknowledgment of subsisting liability on the part of the Defendant.

129. In the absence of any legally sustainable ground for exclusion, suspension, or extension of time, the period of limitation necessarily falls to be computed in the ordinary course from the identified “*breaking point*”, namely, 09.12.1989. Consequently, the Plaintiff cannot derive any benefit from the aforesaid communications, and the substantive claims raised before the learned Arbitral Tribunal remain hopelessly barred by limitation.

DECISION:

130. In view of the foregoing discussion and the detailed analysis undertaken by this Court on the issue of limitation concerning the Plaintiff’s substantive claims, which remained the sole issue pressed and contested by the parties after the Order dated 18.12.2024 passed by the Hon’ble Supreme Court, this Court arrives at a definitive and considered conclusion that the substantive claims preferred by the Plaintiff before the learned Arbitral Tribunal were *ex facie* barred by limitation.

131. As elaborately discussed hereinabove, the disputes between the parties had crystallized, and the cause of action had arisen, at the latest, on 09.12.1989, which has been identified as the relevant



“*breaking point*” for the purposes of computation of limitation. However, the arbitral proceedings, in the eyes of the law and within the meaning of Section 37(3) of the 1940 Arb Act, can only be said to have been validly invoked in May-June 1994. The intervening period of more than four and a half years is clearly beyond the statutorily prescribed period of limitation of three years. Further, the Plaintiff has failed to establish any legally sustainable ground for extension, exclusion, suspension, or saving of limitation under the provisions of the Limitation Act. Consequently, the findings returned by the learned Arbitral Tribunal holding the Plaintiff’s claims to be within limitation are legally untenable.

132. In the aforesaid circumstances, the Impugned Award cannot be sustained in the eyes of the law and is accordingly set aside. The present suit, being *CS(OS) 549/2009*, stands dismissed accordingly.

133. Before parting with the present matter, this Court deems it necessary to take cognizance of the manner in which the parties have conducted themselves throughout the course of the present litigation.

134. The record reveals that the dispute has traversed multiple forums over a prolonged period of time, commencing before the learned Single Judge, thereafter proceeding before the Division Bench, subsequently reaching the Hon’ble Supreme Court, and ultimately returning to this Court for adjudication pursuant to the remand Order passed by the Hon’ble Supreme Court. Such prolonged litigation, though not entirely uncommon in complex commercial and arbitral disputes, nevertheless casts a corresponding obligation upon the parties to maintain fairness, consistency, precision, and candour in their pleadings and submissions before every judicial forum.



135. In the present case, this Court cannot overlook that both parties have adopted shifting and mutually inconsistent stands, particularly on a foundational factual issue, *namely*, the receipt and service of the Plaintiff's Notice dated 09.12.1989. On 04.02.2026, pursuant to the directions issued by the Hon'ble Supreme Court, this Court accorded priority to the present matter and heard the parties extensively and at considerable length.

136. However, while formulating the present judgment upon a detailed scrutiny of the entire record, which is considerably old, voluminous, and bulky in nature, this Court finds that the written Pleadings and the oral submissions advanced on behalf of both parties are not only inconsistent *inter se* but also materially deviate from their earlier positions reflected on record. Such conduct, in the considered opinion of this Court, has unnecessarily complicated and prolonged the adjudicatory process and has resulted in avoidable consumption of judicial time and resources, particularly in a system already burdened with substantial pendency of cases.

137. This Court is further of the considered view that had both parties acted with greater fairness and adhered strictly to the settled principles governing pleadings under law, and had the submissions advanced before the learned Coordinate Bench, the Division Bench and the Hon'ble Supreme Court remained confined to and consistent with the averments contained in such Pleadings, there may not have arisen any necessity for a second round of adjudication of the present matter before this Court pursuant to the remand order of the Hon'ble Supreme Court.



2026:DHC:4178



138. In these circumstances, this Court is of the considered and inescapable opinion that both parties must bear the consequences of their conduct in the present proceedings. Accordingly, **costs are imposed upon both the Plaintiff and the Defendant, quantified at Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) each.**

139. The said amounts shall be deposited by the respective parties **within a period of four (04) weeks from the date of the present judgment with the Delhi High Court Legal Services Committee.**

140. In the event of failure on the part of either of the parties to comply with the aforesaid directions within the stipulated period, the Registry of this Court is directed to list the present matter before this Court upon expiry of the said period for passing appropriate orders in accordance with law.

141. The present Suit, along with the objections preferred by the Defendant, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MAY 12, 2026/sm/sg