



2025:DHC:3823-DB



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

Date of decision: 08<sup>th</sup> MAY, 2025

IN THE MATTER OF:

+ **FAO (COMM) 83/2024 & CM APPL. 26835/2024**

**M/S CONTRUCTION INDUSTRY DEVELOPMENT COUNCIL**

.....Appellant

Through: Mr. N. K. Kantawala, Mr. Satyender Chahar, Mr. Amaya Mandir, Mr. Sidharth Vardhman, Mr. Nishant Kantawala, Advocates.

versus

**M/S MCM WORLDWIDE PRIVATE LIMIED & ANR.**

.....Respondents

Through: Mr. Siddharth Shankar and Mr. Sharique Ajmal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J.**

1. The present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A&C Act"*) by the Appellant herein challenging a Judgment dated 26.03.2024 passed by the Ld. District Judge (Commercial Court -01) South East, Saket Courts, New Delhi (*hereinafter referred to as "District Judge"*) in OMP (COMM) 64/2023. The Ld. District Judge by the Judgment impugned herein has dismissed the petition filed under Section 34 of the A&C Act by the



Appellant and has affirmed the Order dated 19.05.2023 passed by the Ld. Arbitrator dismissing an application filed by the Appellant under Section 16 of the A&C Act.

2. Shorn of unnecessary details, facts leading to the filing of the present appeal are that the Appellant herein is a society registered under the Societies Registration Act, 1860 which was established to take up the activities for the development of the Indian Construction Industry. The Appellant also provides services of training, testing and certification of construction workers and supervisors for their skill upgradation.

3. It is stated that an Memorandum of Understanding (*hereinafter referred to as "MoU"*) dated 05.05.2008 was entered between the Appellant and the Employment Generation and Marketing Mission ["EGMM"], Department of Rural Development, Govt. of Andhra Pradesh in respect of training, testing and certification of workers of different construction trades.

4. The Appellant had earlier entered into an MoU dated 02.03.2006 with the Respondent herein for executing those contracts which were received by the Appellant. With respect to the MoU dated 05.05.2008, the training work was allotted to the Respondent by the Appellant in the years 2009 and 2010. The Respondent completed the said work and accordingly, raised invoices to the Appellant, which in turn, raised the bills to the EGMM.

5. Admittedly, a sum of Rs. 38,28,040/- has not been paid by EGMM to the Respondent, with respect to the work done by the Respondents in accordance with the MoU dated 05.05.2008 entered into between EGMM and the Appellant. Since the said payment was not forthcoming, a number of letters have been written by the Appellant to EGMM stating that the



outstanding amount is yet to be paid to the Respondent. The Respondent has also written a number of letters to EGMM, following up on the payment of outstanding amount.

6. Thereafter, the Respondent filed a suit for recovery of Rs.31,18,068/- along with interest @ 18% per annum against the Appellant before the Ld. ADJ-06, Saket Court, New Delhi. The Appellant filed an application under Section 8 of the A&C Act before the Ld. ADJ stating that since there exists an arbitration clause in the MoU dated 05.05.2008, the dispute be referred to the arbitration and the said application was allowed vide Order dated 03.08.2019.

7. Pursuant to the said order, the Respondent filed a petition being ARB.P. 1/2020 under Section 11 of the A&C Act before this Court for the appointment of an Arbitrator and vide Order dated 27.09.2021, a Sole Arbitrator was appointed by this Court to adjudicate upon the disputes between the Appellant and the Respondent. Pleadings of both the parties were completed before the Ld. Arbitrator. However, at the stage of framing of issues, the Appellant filed an application under Order VII Rule 11 CPC before the Ld. Arbitrator contending that the claims submitted by the Respondent are barred by limitation. The said application was dismissed by the Ld. Arbitrator vide Order dated 16.04.2022 on the ground that the claims raised by the Respondent are well-within the stipulated period of limitation.

8. Challenging the Order dated 16.04.2022, the Appellant filed a petition under Section 34 of the A&C Act. The said petition was rejected by the Ld. ADJ vide Order dated 11.11.2022 on the ground that dismissal of an application filed under Order VII Rule 11 CPC cannot be challenged in a petition filed under Section 34 of the A&C Act. The said Order was further



challenged by the Appellant before this Court by filing an appeal bearing FAO(COMM) no. 50/2023 which was disposed of by this Court vide Order dated 24.02.2023, wherein liberty was given to the Appellant to file an application under Section 16 of the A&C Act before the Ld. Arbitrator.

9. Pursuant to the said Order passed by this Court, the Appellant filed an application under Section 16 of the A&C Act taking the plea of limitation. Before the Ld. Arbitrator, the Appellant took a plea that the case is covered by Article 18 of the Limitation Act, 1963 (*hereinafter referred to as "Limitation Act"*) and since the invoices are raised during the years 2009-2010, the Respondent should have filed the claims within three years from the said period i.e., 2009-2010. It is also contended that the Appellant has not acknowledged any liability and even if so acknowledged, the cause of action arose on 04.02.2014, on which date the Appellant addressed a letter to EGMM to make the outstanding payment to the Respondent. *Per Contra*, Respondent took a plea before the Ld. Arbitrator that the Appellant has been corresponding with the EGMM for the payment of outstanding amount to the Respondent and the last of the letters was sent on 04.02.2014, which amounts to the acknowledgement of liability. However, a legal notice dated 10.10.2017 was issued by the Respondent to Appellant and reply dated 21.11.2017 to that effect was issued stating that the work done by the Respondent was not as per the satisfaction, thereby giving rise to a fresh cause of action.

10. The Ld. Arbitrator observed that the letters have been written by the Appellant to EGMM on various dates and the last letter addressing the issue of non-payment of outstanding payments was written on 04.02.2014. It is also observed that the Respondent has also written a series of letters to



EGMM overlapping the requests made by the Appellant. The Ld. Arbitrator accepted the arguments of the Respondent that the reply dated 21.11.2017 issued by the Appellant to the legal notice dated 10.10.2017 issued by the Respondent, wherein it was stated that the work has not been performed as per the MoU dated 05.05.2008, amounts to a departure from its earlier stand awaiting the payment from EGMM and that the case would fall within the ambit of Article 113 of the Limitation Act. The Ld. Arbitrator further observed that since the said reply specifically mentioned the non-performance of the Respondent as per the said MoU, the same amounts to a fresh cause of action. The Ld. Arbitrator, therefore, vide Order dated 19.05.2023 rejected the application filed by the Appellant under Section 16 of the A&C Act on the ground that the Respondent submitted its claims within the limitation period.

11. The said Order passed by the Ld. Arbitrator was challenged by the Appellant before Ld. District Judge by filing a petition being OMP (COMM) 64/2023 under Section 34 of the A&C Act and vide Impugned Judgment dated 26.03.2024, the Ld. District Judge held that till 04.02.2014, the Appellant had been regularly corresponding with EGMM regarding the outstanding payments. The Ld. District Judge placed reliance upon the letter dated 07.10.2014 issued by the Respondent to the Appellant claiming the outstanding payments as well as the letter dated 23.02.2017 issued by the Appellant to the Respondent stating that they are awaiting release of payment from EGMM. The Ld. District Judge held that the letter dated 23.02.2017 amounts to acknowledgment of liability and that the period of limitation shall be computed from the same date, therefore, the claim has



been made within three years from 23.02.2017. Accordingly, the petition filed by the Appellant under Section 34 of the A&C Act is dismissed.

12. It is this Impugned Judgment dated 26.03.2024 passed by the Ld. District Judge which is under challenge in the present appeal.

13. Heard learned Counsel appearing for the Parties and perused the material on record.

14. Learned Counsel for the Appellant and the Respondent have reiterated their respective stands made before the Ld. Arbitrator and before the Ld. District Judge.

15. The undisputed list of events reads as under:

<b><i>Date</i></b>	<b><i>Event</i></b>
02.03.2006	<i>A Memorandum of Understanding (MoU) was executed between the Appellant and the Respondent for the purpose of managing the ITI's as approved Training Centres for accomplishing the foregoing objectives, wherein the Respondent has been appointed as the constituent institution.</i>
05.05.2008	<i>An MoU was executed between the Appellant and the Employment Generation and Marketing Mission (EGMM), Department of Revenue, Government of Andhra Pradesh regarding the training, testing and certification of workers of different construction trades in construction sector. The said training work was allotted to the Respondent by the appellant for execution of the said MoU.</i>
2009-2010	<i>The Respondent has executed the work as per the terms of the MoU dated 05.05.2008. Invoices to that effect have been raised by the Respondent during this period.</i>
13.12.2010	<i>The Appellant sent an email to the EGMM pertaining to the outstanding amounts to be paid to the Respondent, wherein it categorically stated a list of training centres against which the pendency is existing.</i>



08.02.2011 to 04.02.2014	<i>During this period, the Appellant had repeatedly written letters to EGMM stating that the work undertaken as per the MoU dated 05.05.2008 has been completed and requested the EGMM to pay the outstanding amounts payable to the Respondent.</i>
03.11.2012	<i>A letter has been written by the Respondent to the Appellant stating that they have trained, tested and certified 7104 candidates as per the MoU dated 05.05.2008. It is also stated that the Appellant owes an outstanding amount of Rs. 34,06,842/- to the Respondent.</i>
15.11.2012	<i>A reply to the letter dated 03.11.2012 has been sent by the Appellant to the Respondent stating, "The payment being claimed by you, could only be made after these have been admitted &amp; released by EGMM. You are expected to follow up this &amp; get the payments released at the earliest."</i>
26.11.2012	<i>Referring to the reply dated 15.11.2012, the Respondent sent a letter to the Appellant stating that as per the MoU dated 02.11.2006, all charges for training, testing and certification shall be collected by the Appellant and the Respondent be reimbursed with all expenses during the discharge of work. It is also stated that all correspondence with the external agencies including state government of any nature to accomplish the objectives of the MoU are to be made by the Appellant.</i>
18.01.2013	<i>Respondent wrote a letter to the Appellant demanding the outstanding dues amounting to Rs. 34,06,842/-.</i>
19.01.2013	<i>Reply to the letter dated 18.01.2013 has been sent to the Respondent by the Appellant stating, "The matter has been explained to you in detail, &amp; we would advise you to expedite release to the payment from the principal client to enable us to take any onward action. Please take note of our letter no. CIDC/VT/AP/GC/06 dated January 19<sup>th</sup>, 2013 to initiate follow up actions at your end for an early recovery of dues."</i>
04.02.2014	<i><b>The letter written by the Appellant to the EGMM regarding</b></i>



	<b><i>the outstanding amount payable to the Respondents.</i></b>
07.10.2014 to 02.02.2017	<i>During this period, various letters have been written to the Appellant by the Respondent requesting for the release of outstanding dues of Rs. 31,18,065/-.</i>
23.02.2017	<i>A letter was sent by the Appellant to the Respondent stating, "As has been repeatedly explained to you and as has been agreed, we are not able to release the payment to you since the concerned payment has not been released by the Govt. of Andhra Pradesh. You are requested once again to use your good offices to get the money released by the department so that we can release your dues."</i>
28.02.2017	<i>Another letter sent to the Appellant by the Respondent claiming the outstanding amount of Rs. 31,18,065/- along with interest @ 18% per annum.</i>

16. The findings of the Ld. Arbitrator and the concerned Court entertaining the application under Section 16 of the A&C Act that the limitation is extended up to 04.02.2014 requires no interference. It is also noted that after the letter dated 04.02.2014, there was no correspondence by the Appellant regarding the non-payment of the outstanding amounts.

17. At this juncture, it is pertinent to note that the next letter dated 21.11.2017 written by the Appellant to the Respondent, which is a reply to the legal notice dated 10.10.2017, states that unless the remaining amount is received from the EGMM, the Appellant would not be able to pay the Respondent. The relevant portion of the said letter reads as under:

*"5. As per the understanding between your client and CIDC, MCM was supposed to conduct training, testing and certification programmes as per the terms and conditions signed between CIDC and EGMM and 50% advance shall be payable at the time of commencement of each course after giving a work plan and balance*



*50% shall be paid on completion of three months training adjusted to actual placements. At least 80% of the youth trained should be placed. In case of a shortfall, the balance will be released after remaining placement is provided.”*

18. It is also pertinent to mention that the letter dated 28.02.2017 issued by the Respondent to the Appellant demanding the outstanding amount will not give a rise to any fresh cause of action.

19. The limited issue which arises for consideration is whether the letter dated 21.11.2017, which is a reply to the legal notice dated 10.10.2017, will give rise to a fresh cause of action or not.

20. However, before going into this aspect, it is necessary to go into the issue as to whether the present case would be governed by Article 18 or Article 113 of the Limitation Act.

21. Article 18 of the Limitation Act reads as under:

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
18	<i>For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.</i>	<i>Three years.</i>	<i>When the work is done.</i>

22. Article 113 of the Limitation Act reads as under:

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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113	<i>Any suit for which no period of limitation is provided elsewhere in this Schedule.</i>	<i>Three years.</i>	<i>When the right to sue accrues.</i>
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23. In the present case, the Respondent is claiming the amount for the work done by it in the years 2009 and 2010 in pursuance to the MoU dated 05.05.2008. In the opinion of this Court, the present case is squarely covered by Article 18 of the Limitation Act, 1963 as the Respondent is seeking the amount payable for the work done by it and no time limit has been fixed for payment under the MoU entered into between the parties.

24. Article 113 of the Limitation Act is a residuary clause. It is well settled that Article 113 of the Limitation Act can be invoked only when no period of limitation is provided elsewhere in the schedule. Since, the present case is squarely covered by Article 18 of the Limitation Act, the Article 113 of the Limitation Act, therefore, cannot be invoked at all. This Court is fortified by the Judgment passed by the Apex Court in State of Punjab v. Gurdev Singh, (1991) 4 SCC 1, wherein the following is observed:

*“6. First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed “period of limitation” must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines, “prescribed period” to mean the period of limitation computed in accordance with the provisions of the Act. The court's function on the presentation of plaint is simply to*



*examine whether, on the assumed facts, the plaintiff is within time. The court has to find out when the “right to sue” accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act of 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See (i) Mt. Bolo v. Mt. Koklan [AIR 1930 PC 270 : 57 IA 325 : 1930 ALJ 1188] and (ii) Gannon Dunkerley and Co. Ltd. v. Union of India [(1969) 3 SCC 607 : AIR 1970 SC 1433 : (1970) 3 SCR 47] ).”*

(emphasis supplied)

25. After coming to the conclusion that Article 18 of the Limitation Act is applicable to the present case, the only issue that is left to be considered is the effect of letter dated 21.11.2017, which is a reply to the legal notice, issued by the Respondent.

26. At this juncture, it is apposite to refer to Section 18 of the Limitation Act. Section 18 of the Limitation Act reads as under:

**“18. Effect of acknowledgment in writing.—(1)**  
*Where, before the expiration of the prescribed period*



*for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*

*(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

27. For Section 18 of the Limitation Act to apply, the acknowledgment of liability must be within the period of limitation. The last letter written by the Appellant to the EGMM is on 04.02.2014, wherein the liability has been



acknowledged. Therefore, even if the period of limitation is calculated from 04.02.2014, the limitation expires on 04.02.2017. The letter on which reliance has been placed by the Respondent is dated 21.11.2017 which is after the period of three years. Both the Ld. Arbitrator and the Ld. District Judge have missed this fundamental aspect that the acknowledgment of liability having been made beyond the stipulated period of limitation i.e., three years and the same would not enlarge the period of limitation.

28. In light of the same, it is pertinent to refer to the observations of the Apex Court in Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd., (2004) 12 SCC 360, which are as under:

*“14. According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.”*

29. The Apex Court in its recent Judgment in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417 has observed as under:

*“133. In Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria [Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria, 1961 SCC OnLine SC 147 : AIR 1961 SC 1236 :*



*(1962) 1 SCR 140] while dealing with Section 19 of the 1908 Act, which is in pari materia with Section 18 of the 1963 Act, this Court held that for a valid acknowledgment, under the provision, the essential requirements are:*

*(a) it must be made before the relevant period of limitation has expired;*

*(b) it must be in regard to the liability in respect of the right in question; and*

*(c) it must be made in writing and must be signed by the party against whom such right is claimed.*

**134.** *In para 6 of the judgment, it was observed : (Khan Bahadur Shapoor case [Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria, 1961 SCC OnLine SC 147 : AIR 1961 SC 1236 : (1962) 1 SCR 140] , SCC OnLine SC paras 6-7)*

*“6. ... The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In*



*construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. ...*

*7. ... The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document, ...”*

*(emphasis supplied)*

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**156.** *Having considered the judicial precedents on the subject, in our view, to extend the period of limitation with the aid of Section 18, the acknowledgment must involve an admission of a subsisting jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship regarding an existing liability. Such intention can be gathered from the nature of the admission. In other words, the admission in question need not be express, or regarding a precise amount, but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as on the date of the statement. However, where an acknowledgment is in respect of a specified sum of money or a specific right only, and not in*



*general terms, it would extend the period of limitation only in respect thereof, and not of other claims which, though may have arisen out of same jural relationship, are not specified therein. In other words, where an acknowledgment of liability is made only with reference to a portion of the claim put forward by the plaintiff/claimant, it would extend limitation only in respect of such portion, and not of the entire claim of the plaintiff.”*

30. Applying the aforesaid principles, this Court is of the view that that the letter dated 21.11.2017 will not enlarge the period of limitation.

31. In the instant case, the decision of the Ld. District Judge and the Ld. Arbitrator is contrary to the provisions of the Limitation Act and is, therefore, opposed to the Public Policy of India and also suffers from patent illegality. The claim of the Respondent is barred by limitation and, therefore, disputes are non-arbitrable. This Court has, therefore, no other option but to set aside the Impugned Judgment dated 26.03.2024 passed by the Ld. District Judge.

32. With the foregoing observations, the appeal is allowed. Pending applications, if any, stand disposed of.

**SUBRAMONIUM PRASAD, J**

**HARISH VAIDYANATHANSHANKAR, J**

**MAY 08, 2025**

*S. Zakir*