



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Arbitration Application No. 16/2024

M/s Sinsinwar Construction Company, Having Its Office At Vpo Sinsini Thok-Dhaiyar, Tehsil Deeg, District Bharatpur (Raj.) Through Its Proprietor Sukhveer Singh Sinsinwar S/o Shri Ratan Singh, Aged About 33 Years, R/o Village And Post Sinsini, Tehsil Deeg, District Bahratpur (Raj.).

-----Petitioner

Versus

1. The Chief General Manager, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Jaipur, Having Its Office At Ahinsa Circle, C-Scheme Jaipur (Rajasthan).
2. The General Manager, Bharat Sanchar Nigam Limited, Telecom District Bharatpur (Rajasthan)
3. Assistant General Manager(Planning), O/o Tdm, Bahrat Sanchar Nigam Limited, Bharatpur (Raj.).

-----Respondents

For Petitioner(s) : Mr. Anshuman Saxena
Mr. Divyansh Saini
For Respondent(s) : Mr. Jitendra Sharma

JUSTICE ANOOP KUMAR DHAND

Order

08/05/2025

1. The instant arbitration application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') has been filed by the petitioner for appointment an arbitrator to adjudicate/resolve the dispute pending between the parties, arising out of the agreement dated 29.02.2016, which contains the following arbitration clause :-

"17. ARBITRATION:

17.1 In the event of any question, dispute or difference arising under this agreement or in



connection there-with (except as to matter the decision of which is specifically provided under this agreement), the same shall be referred to sale arbitration of the Chief General Manager, Rajasthan Telecom Circle, Jaipur or in case his designation is changed or his office is abolished then in such case to the sole arbitration of the officer for the time being entrusted whether in addition to the functions of the Chief General Manager or by whatever designation such officers may be called (hereinafter referred to as the said officer) and if the Chief General Manager, (Name of the Circle) or the said officer is unable to act as such to the sole arbitration or some other person appointed by the Chief General Manager, or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996 and its subsequent amendments. There will be no objection to any such appointment that the arbitrator is BSNL Servant or that he has to deal with matter to which the agreement relates or that in the course of his duties as BSNL Servant has expressed view on all or nay of the matter under dispute. The award of the arbitrator shall be final and binding on the parties. In the event of such arbitrator to whom the matter is originally referred, being unable to act for any reasons whatsoever such Chief General Manager or the said officer shall appoint another person to act as arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stag at which it was left out by his predecessors.

17.2 The arbitrator may from time to time with the consent of parties enlarge the time for making and publishing the award, subject to aforesaid Indian Arbitration and Conciliation Act 1998 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

17.3 The venue of the arbitration proceeding shall be the office of the Chief General Manager, (Name of the circle) or such places as the arbitrator may decide. The following procedure shall be followed:

17.3.1 In case parties are unable to reach a settlement by themselves, the dispute should be submitted or arbitration in accordance with contract agreement.

17.3.2 There should not be a joint submission with the contractor to the sole arbitrator.

17.3.3 Each party should submit its own claim severally and may oppose the claim put forward by the other party.





17.3.4 The onus of establishing his claims will be left to the contractor.

17.3.5 Once a claim has been included in the submission by the contractor, a reiteration or modification there of will be opposed.

17.3.6 The "points of defence" will be based on actual conditions of the contract.

17.3.7 Claims in the nature of ex-gratia payment shall not be entertained by the Arbitrator as these are not contractual.

17.3.8 The question whether these conditions are equitable shall not receive any consideration in the preparation of "points of defence".

17.3.9 If the contractor includes such claims in his submission, the fact that they are not contractual will be prominently placed before the Arbitrator."

2. Counsel for the petitioner submitted that the respondents have terminated the contract of the petitioner and forfeited the amount which caused dispute between the parties for which a notice was served upon the respondents on 03.08.2021 for referring the dispute to the Arbitrator. Counsel submitted that no response to the said notice was given, hence under these circumstances, the instant application has been submitted for settlement of the dispute through Arbitrator.

3. Per contra, counsel for the respondents opposed the arguments and submitted that the cause of action arose with the petitioner in the month of October, 2019 and the petitioner was sleeping over the matter for a prolonged duration and now the instant application has been filed by him after expiry of the period of limitation i.e. three years, hence, under these circumstances, this application is not maintainable. Counsel submits that though the copies of the notices have been placed on record but the same were never served in the office of the respondents, hence, the instant arbitration application is barred by limitation and the same is liable to be rejected on this count alone.



4. In rejoinder, learned counsel for the petitioner submitted that as per Article 137 of the Limitation Act, the limitation for filing the application is three years and in the instant case, notice was issued and served upon the respondents in the month of August, 2021 and thus, instant application has been preferred before the expiry of the period of limitation. Counsel submitted that Larger Bench of the Hon'ble Apex Court in the case of **M/S Arif Azim Co. Ltd. Vs. M/S Aptech Ltd.**, reported in **2024 (5) SCC 313**, has held that the limitation period for making an application seeking appointment of Arbitrator would start after serving notice to the other side and in the instant case, notice was served upon the respondents in the month of August, 2021 and the instant arbitration application has been filed in the month of November, 2023 i.e. before expiry of the period of limitation, hence the application has been filed within the period of limitation.

5. Heard and considered the submissions made at Bar and perused the material available on record.

6. The agreement executed between the parties is not disputed. This fact is not in dispute that the contract of the petitioner has been terminated and the money has been forfeited by the respondents in the month of October, 2019. It has been disputed by the learned counsel for the respondents that no notices were served upon them but perusal of the record indicates that notices were sent to the respondents by the petitioner on 03.08.2021 and thereafter, the instant application has been submitted for appointment of Arbitrator before this Court on 29.11.2023. As per judgment passed by the Hon'ble Apex Court in the case of **M/S Arif Azim Co. Ltd (Supra)** the period of limitation for filing the



application would start from the date of notice and in the instant case, the application has been filed within a period of limitation, after issuance of notice to the respondents, hence this application cannot be treated as time barred.

7. At this stage, counsel for the respondents in support of his contention has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **M/S B & T AG Vs. Ministry of Defence** reported in **2023 SCC Online SC 657**.

8. Counsel for the petitioner submits that the judgment relied by the respondent in the case of **M/S B & T** (Supra) has subsequently been referred in the case of **M/S Arif Azim** (Supra) and it was held that the limitation would start from the date of notice and not from the date when the cause of action arises.

9. The view taken by the Larger Bench of the Hon'ble Supreme Court at later stage will preside over the view taken on earlier occasions, hence the application is found to be filed within the period of limitation.

10. In view of the above, this Court deems it just and proper to appoint Shri Mahaveer Prasad Sharma (Retd. District Judge) resident of C-10, Near Ojha Ji Ka Bag, Gandhi Nagar, Tonk Road, Jaipur-302015 as Sole Arbitrator to adjudicate/resolve the dispute between the parties.

11. The appointment of the Sole Arbitrator is subject of declaration being made under Section 12 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') with respect to the independence and impartiality and ability to devote sufficient time to complete the arbitration proceedings within the prescribed period.



12. The arbitration fee of the Sole Arbitrator shall be payable in accordance with the provisions contained in the Manual of Procedure of Alternative Dispute Resolution, 2009 as amended by the Manual of Procedure for Alternative Dispute Resolution (Amendment), 2017 vide notification dated 23.03.2017 read with 4th schedule appended to the Act of 1996 or as determined by the Arbitrator with consensus of parties.

13. The Registry is directed to intimate the Arbitrator-Shri Mahaveer Prasad Sharma (Retd. District Judge) resident of C-10, Near Ojha Ji Ka Bag, Gandhi Nagar, Tonk Road, Jaipur-302015 for his approval and declaration in terms of Section 11(8) read with Section 12(1) of the Act of 1996.

14. All issues raised by the parties before the Arbitrator shall be considered in accordance with law.

15. Since as per Section 29A of the Act of 1996, the arbitration proceedings are required to be concluded within the scheduled time as stipulated therein, it is expected from the parties to appear before the Arbitrator on 26.05.2025 or on any other date as informed by the Arbitrator subject to agreement by the parties. Furthermore, the parties shall provide their respective E-mail/ contact number/ mobile number and/or also of their authorized representatives/ Lawyers appearing on their behalf before the Arbitration Tribunal, in order to facilitate the Arbitrator to send information/communication to the parties, whenever required. The information send by the Arbitrator, on such address/ E-mail/ cellphone of the parties or to their authorized representatives/ Lawyers, shall be treated as sufficient communication unless same is not changed.



16. Accordingly, the present arbitration application stands disposed of.

(ANOOP KUMAR DHAND),J

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