



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CIVIL MISC. ARBITRATION APPLICATION No. - 17 of 2025

M/S Assam Dental Supply Co. Through Its
Proprietor Sr, Manoj Jhingren

.....Applicant(s)

Versus

Director General, Medical And Health Services,
Uttar Pradesh Swasthya Bhawan, Luknow And
Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Brijesh Kumar Shukla, 00, Amit Kumar Gaur, Neelam Shukla
Counsel for Opposite Party(s)	: C.S.C., Hari Govind Upadhyay

Court No. - 7

HON'BLE JASPREET SINGH, J.

1. Heard Shri Brijesh Kumar Shukla, learned counsel for the petitioner and Shri Hari Govind Upadhyay Additional Chief Standing Counsel for the respondents.
2. The present petition has been filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents arising from a purchase order number 8F/QC-485/2007-08/3632 dated 31.03.2008.
3. Submission of the learned counsel for the petitioner is that an agreement was entered between the petitioner and the respondent dated 28.03.2008 in terms whereof the petitioner had agreed to the supply Electrically operated Dental Chair Mount units. In furtherance of the said agreement the petitioner made the supplies and installed the said equipment between April and December 2008.
4. It was also stated that the respondents had made a part payment to the petitioner of Rs.2,23,74,880/- while there was an outstanding amount of Rs.3,59,00,000 which was still to be paid by the respondents. It was also pointed out that the agreement entered between the parties contained arbitration clause in terms whereof it was provided that in case of any

dispute arising between the parties, the same shall be referred to the arbitration of the director or any person nominated by him in writing.

5. It was pointed out that the petitioner remained in touch with the respondents and kept patient and acted upon the assurance extended by the respondent that they would release the payment soon, hence the petitioner did not precipitate the situation. However, on two occasions the respondents had written a letter to the petitioner stating that in case if he forgoes his interest on the outstanding sum, the payment could be made. In furtherance thereof the petitioner also furnished an affidavit before the respondent, yet it did not evoke any positive response and thereafter the petitioner being tired of the procrastinating attitude of the respondent invoked the arbitration clause by its notice dated 14.11.2024. The respondents did not reply to the said notice and in the aforesaid backdrop the petitioner filed the instant petition seeking indulgence of the Court for appointment of a Sole Arbitrator.

6. Shri Har Govind Upadhyay, learned Additional Chief Standing Counsel alongwith Shri Hemant Kumar Pandey, learned Standing Counsel for the State has raised an objection to the effect that even though the existence of the arbitration clause and its invocation is not disputed but the fact remains that the claim as set up by the petitioner was hugely time barred and in such circumstances the instant petition for seeking appointment of an Arbitrator in respect of dead claims cannot be entertained and deserves to be dismissed.

7. Shri Shukla learned counsel for the petitioner in response has pointed out that the respondent never denied the existence of outstanding sum to the petitioner and as late as on 04.10.2021 and 15.03.2023 had acknowledged the debt and the outstanding payment of the petitioner and in such circumstances it cannot be said that the claims are dead or barred by limitation.

8. It was also submitted that the issue as to whether the claims are time barred and also be considered by the Arbitral Tribunal in terms of Section 16 of the Act 1996 and it may not be appropriate for this Court in exercise of power under Section 11(6) of the Act, 1996 to enter into this

controversy, hence the petition deserves to be allowed.

9. The Court has considered the rival submissions and also perused the material on record.

10. At the outset, it may be noticed that scope of this Court for entertaining a petition under Section 11 of the Act 1996 is narrow. While considering such an application this Court is required to be satisfied that there is **(i)** a valid arbitration clause; **(ii)** that the parties have approached the correct jurisdictional High Court; **(iii)** the arbitration clause has been appropriately invoked and **(iv)** that the claims are *prima facie* live.

11. In light of the aforesaid context and considering the rival submissions, it may be noticed that it is not disputed that the respondents had issued a tender for the supply of dental chair mount units which were supplied by the petitioner. It is also not disputed that against the entire outstanding sum payable to the petitioner as per his invoice, only a sum of Rs.2,23,74,880/- was paid to the petitioner and the remaining sum of Rs.3,59,00,000/- remained unpaid.

12. From the documents brought on record, it appears that certain inquiries were made by some Members of the Parliament, on the floor of the House of Parliament and in furtherance thereof proper scrutiny was done and a report of the Government declared that the equipment issued by the contractors was assembled and was substandard.

13. In furtherance thereof the respondents had issued a show cause notice to the petitioner on 28.02.2013 and its reply was also given by the petitioner to the respondent on 07.03.2013 clearly denying the alleged allegation of supplying substandard equipment.

14. In the aforesaid backdrop, the matter remained pending with the department and then again the respondent reacting to a letter written by the petitioner making claims for the outstanding sum required the petitioner to furnish an undertaking that he would not claim interest on the principal outstanding sum in case if the payment is made to the petitioner. The petitioner reacting to the said letter on 16.10.2021 also furnished his affidavit complying with the condition put forth by the respondents.

15. The petitioner has also referred to certain letters which find place in the petition as well as in the rejoinder-affidavit filed by the petitioner indicating that repeated letters were exchanged between the petitioner and the respondent, relating to the payment as claimed by the petitioner. This correspondence continued till June 2023 whereafter the petitioner issued the legal notice on 14.11.2024 and the petition under Section 11(6) of the Act of 1996 came to be filed on 13.02.2025.

16. In the aforesaid factual backdrop, if the contention of the respondent State is examined, it would *prima facie* reveal that there is no denial of the fact that the total amount against the supplies of dental chairs mount units was not made to the petitioner and from time to time the parties were negotiating. The letter dated 04.10.2021 clearly indicates the condition put forth by the respondents that the issue of payment may be considered provided the petitioner gives up its claim of charging interest on the outstanding sum. The petitioner has also brought on record its letter dated 16.10.2021 indicating that he had written to the respondent authorities and also furnished an affidavit complying with their condition that the petitioner is ready to leave the interest component. This correspondence continued till June 23 where after on 14.11.2024 the notice invoking the arbitration clause was moved.

17. It may be true to some extent that since August 2008 when some part payment was made to the petitioner thereafter till 2021 there has been scant exchange of letter and then again in October 2021 the respondents required the petitioner to furnish an affidavit for giving up his claim of interest payable on the outstanding sum. It was also not disputed by the respondent that in pursuance of the show cause dated 28.02.2013 the petitioner has submitted his reply on 07.03.2013 but no material was placed on record by the respondents to indicate as to whether any adjudication took place on the show cause notice and what was the result of the undertaking given by the petitioner and what was the outcome of the determination of the show cause noticed.

18. Once the respondents had issued a letter dated 04.10.2021 and from the perusal of the said letter, it indicates that the claim of the petitioner was still under consideration, accordingly this Court *prime facie* finds that

the petition filed by the petitioner is within the residuary period of three years, which is to be noticed from the date of invoking the arbitration clause dated 14.11.2024. No material was brought on record by the respondent to indicate that they had taken a positive stand referring or denying the claim of the petitioner as time barred or for any other reason.

19. Be that as it may, considering that the petition has been filed within three years from the date of invocation the arbitration clause. However, primary objection raised by the respondents regarding time barred claim on the premise that part payment was made in 2008 and thereafter the notice invoking arbitration was sent on 14.11.2024, this relates to the merit of the claim. This Court in exercise of power under 11(6) of the Act of 1996 is not required to examine the claims on the merit.

20. Taking a tentative view and also noticing the scheme of the Act including Section 16 of the Act of 1996. It is clear that as far as the limitation relating to the claims are concerned that is a mixed question of fact and law and cannot be cursory considered in proceedings under 11(6) of the Act of 1996. Had there been no letter of the respondents perhaps the factual situation could have been different for the Court to ex facie come to the conclusion that the claims were time barred. However, in the instant case the fact that the petitioner was not informed about the action proposed on the show cause issued to him which was duly reply on 07.03.2013 and thereafter the letters written by the respondents requiring the consent of the petitioner that he may forgo his interest, makes it a debatable issue which requires consideration upon sifting of evidence which can be appropriately done by the Arbitral Tribunal.

21. In light of the aforesaid, this Court is of the view that leaving all the contentious issue regarding the live status of the claims can be adjudicated by the Arbitrator, even as a preliminary issue in terms of Section 16 of the Act 1996. Since the arbitration clause and its invocation as well as the fact that the parties are before the correct jurisdictional High Court, this Court is of the opinion that the matter can be referred for arbitration and consequently the Court provides that all contentious questions are left open to be raised and adjudicated before the Sole Arbitrator. It is clarified that any observation made by the Court may not

be treated as an expression of opinion on merits of the issue of limitation, which if raised before the Sole Arbitration shall be decided on the strength of the evidence led by the parties.

22. The Court proposes the name of **Hon'ble Mr. Justice O. P. Srivastava, Former Judge of this Court, R/o 2/39 Vivek Khand, Gomti Nagar, Lucknow (U.P.), Mobile No.9415217222** to act as an Arbitrator.

23. Learned counsel for the petitioner shall submit the entire paper book with the office of this Court within a week from today which shall be forwarded to the proposed Arbitrator for seeking the consent of the proposed Arbitrator in terms of Section 12(5) of the Arbitration & Conciliation Act, 1996.

24. List this matter on 9th of October, 2025 for further orders.

(Jaspreet Singh,J.)

September 8, 2025
ank