HON'BLE SRI JUSTICE K. LAKSHMAN

ARBITRATION APPLICATION No.180 OF 2024

ORDER:

Heard Mr. J. Srinadh Reddy, learned counsel for the applicant and Mr. K. Mohan, learned counsel for the respondents.

2. This application is filed under Section - 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 (for short 'Act, 1996'), to appoint a sole Arbitrator to adjudicate the disputes/claims between the applicant and the respondents.

3. **CASE OF THE APPLICANT**:

i) The applicant had participated in a tender issued by the Signal and Telecommunications (S&T) Department of the South-Central Railway for the execution of certain works under Tender Notice No.GNT/SG/2012-13/TTR-NLPD-NDL/17-19 dated 22.06.2012. Upon being declared the successful bidder, the contract was awarded *vide* Letter of Acceptance (LOA) No. GNT/SG/2012-13/TTR-NLPD-NDL/19(la) dated 11.12.2012 for a total contract value of Rs.59,11,058/-, with a completion period of six months, ending on 10.06.2013.

ii) The contract work was interdependent on the track renewal work being carried out by the Engineering Department of the respondent. The applicant contends that the S&T authorities mismanaged the scheduling of the contract, inviting tenders prematurely before the engineering work was completed, which resulted in substantial delays.

iii) The applicant was unable to commence the work due to pending track renewal. Despite notifying the authorities in 2012, the agreement execution was delayed until 10.04.2015. Meanwhile, the applicant continued to extend the performance guarantee.

iv) The respondents issued several notices of slow progress despite the applicant's inability to proceed due to the respondents' failure to provide a work-front. Eventually, a termination notice was issued on 04.01.2017, after the contract had already expired on 10.06.2015. The applicant claims that the termination was illegal.

v) The applicant requested arbitration in terms of the contract by sending notices on 30.06.2017, 10.05.2022, and 29.06.2022. However, the respondents rejected the request, leading to filing the present petition for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

4. **<u>CONTENTIONS OF THE APPLICANT</u>**:

i) The applicant contends that the termination of the contract is illegal as the agreement had already expired on 10.06.2015. The subsequent notices of slow progress, 7-day notice, and 48-hour notice were all issued without legal validity.

ii) The applicant is entitled to a refund of the Earnest Money Deposit (EMD) and the performance guarantee since the contract was terminated without fault on his part.

iii) The applicant incurred significant expenses towards office maintenance, salaries, advances to suppliers and labor, and other costs due to the respondents' mismanagement, which should be reimbursed.

iv) A legitimate loss of profit amounting to 10% of the contract value is sought as compensation for the invalid termination of the contract.

v) Interest at 18% per annum on all claims is sought from the date of termination until the actual payment.

vi) The applicant further contends that the arbitration clause remains enforceable, and the delay in referring the matter to arbitration was due to the respondents' inaction.

5. **<u>CONTENTIONS OF THE RESPONDENTS</u>**:

i) The respondents contend that the petition is time-barred under the contract’s provisions, which require arbitration requests to be submitted within 120 days of termination. The applicant's first request was made on 30.06.2017, 195 days after termination, rendering it invalid.

ii) The respondents further contend that the applicant failed to execute any work despite multiple extensions, including one with liquidated damages imposed. The termination was justified based on continued non-performance.

iii) The respondents state that the arbitration claim was made beyond the statutory limitation period of three years, as prescribed under Section 21 of the Arbitration Act and the Limitation Act, 1963.

iv) The respondents maintain that no loss was incurred by the applicant as no work was executed, and thus, claims of expenditure and loss of profit are unfounded.

v) The respondents placed reliance on the decision in **Bharat Sanchar Nigam Ltd. v. M/S Nortel Networks India Pvt. Ltd.**[1], to contend that Courts may refuse arbitration where claims are *ex-facie* time-barred.

6. **ANALYSIS AND FINDINGS OF THE COURT**:

i) The Andhra Pradesh High Court in **Alliance Enterprises v. Andhra Pradesh State Fiber Net Limited (APSFL)**[2] held that mere passage of time does not bar arbitration if the arbitration clause remains valid.

[1]. AIR 2021 SC 2849
[2]. 2025 SCC OnLine AP 670

ii) In **Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.**[3], the Hon'ble Supreme Court held that limitation for arbitration begins from the rejection of the arbitration request. Since the respondents rejected arbitration only on 25.07.2022, the present petition is within limitation.

iii) The Apex Court in **M/s. B & T AG v. Ministry of Defence**[4] held that time spent in pre-arbitration negotiations must be excluded from limitation calculations. The applicant's continuous attempts to seek arbitration until 2022 would extend the limitation period.

iv) In **Archon Powerinfra India Private Limited v. M/s. Chabbras Associates**[5], this Court held that disputes regarding limitation should be decided by the arbitral tribunal and not at the pre-referral stage.

v) Being referral Court at the referral stage, this Court has to consider existence of an agreement and arbitration clause. If the claim

[3]. (2025) 1 SCc 502
[4]. 2023 SCC OnLine SC 657
[5]. 2024 (6) ALT 5

is hopelessly barred by limitation, this Court can reject the request made by the applicant. In the present case, there exists an agreement and arbitration clause. Claim is not *ex-facie* barred by limitation.

vi) Unless a claim is manifestly time-barred, this Court cannot reject the relief sought by the petitioner to appoint an Arbitrator as held by the Apex Court in **Vidya Drolia v. Durga Trading Corporation**[6]. As discussed above, in the present case, the claim is not manifestly time barred.

vii) As discussed above, there are disputes between the applicant and the respondents and the same are arbitrable in nature.

viii) The applicant's claim is not *ex-facie* time-barred as arbitration was continuously sought.

ix) The respondents' mismanagement of contract execution and premature tender invitation created delays that should not be attributed to the applicant at this stage and respondents can raise the same before the Arbitrator himself.

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[6]. (2019) 20 SCC 406

x) The arbitration clause remains enforceable, and disputes regarding validity and limitation aspect, it is for Arbitrator to consider.

7. **CONCLUSION**:

This Arbitration Application is accordingly allowed, and Mr. Mangari Rajender, Retired District Judge, R/o Villa No.142, Keerthi Richmond Villa, Sun City, Hyderabad - 500 086 (Mobile # 91-94404 83001) is appointed as an Arbitrator to adjudicate the disputes between the applicant and the respondents. Liberty is granted to both the parties to raise all the contentions and grounds which they have raised in the present application before the Arbitrator and it is for the learned Arbitrator to consider the same. In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the Arbitration Application shall stand closed.

K. LAKSHMAN, J

9th June, 2025
Mgr