

Period Of Limitation For Filing A Petition Under Section 11(6) Of The Arbitration Act Is 3 Years: Delhi High Court

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Introduction

In a recent decision in *M/s Space 4 Business Solution Pvt. Ltd. v. The Divisional Commissioner, Revenue Department, GNCTD and Ors.*¹, the High Court of Delhi refused to entertain a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") on the ground that the same was patently barred by limitation. In this article, we navigate through the facts of the case, and findings rendered by the High Court in the aforesaid decision.

Brief Facts

The matter pertains to a petition filed under Section 11(6) of the Arbitration Act seeking the appointment of an independent arbitrator. The petitioner was awarded a tender by the respondent on 12 January 2012 ("**Tender**") and the works were duly executed by the petitioner in accordance with the terms of the Tender. The works performed by the petitioner were for an amount of ₹2,31,30,326 out of which only a sum of ₹1,80,91,192 came to be paid, leaving a balance of ₹50,39,134.

As disputes emerged amongst the parties, and the same could not be resolved, the petitioner issued a legal notice dated 30 April 2014 which was followed by a notice invoking arbitration dated 10 October 2014. Eventually, a sole arbitrator was appointed, who delivered the award dated 24 October 2017 ("**Award**").

The petitioner challenged the Award before the District and Sessions Judge under Section 34 of the Arbitration Act which was allowed *vide* order dated 2 November 2018 and the award was set aside. Thereafter, the petitioner moved an application before DIAC in December 2019 for appointment of an arbitrator to decide the matter afresh. The application remained with the office of DIAC. Ultimately, in January 2024, the petitioner filed the present petition seeking the appointment of an arbitrator.

The respondent vehemently opposed the present petition and submitted that an amount of ₹52,23,401 which was due to the petitioner already stood paid. Further, the present petition did not disclose any separate/ further cause of action. Even otherwise, the respondent argued that the instant petition was barred by limitation as the same was filed after three-year limitation period.

Decision of the High Court

The High Court observed that the Award was set aside on 2 November 2018 and the petitioner could have sought the appointment of the arbitrator within three years as per Section 43 of the Arbitration Act. The instant petition came to be filed on 4 March 2024.

¹ *M/s Space 4 Business Solution Pvt. Ltd. v. The Divisional Commissioner, Revenue Department, GNCTD and Ors.*, 2024: DHC: 4449 judgment dated 22 May 2024.

As such, the period between 15 March 2020 and 28 February 2020 was excluded by the Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020* from computation of limitation on account of intervening pandemic. Despite the above, the instant petition was clearly filed beyond the period of limitation of three years.

The dispute resolution clause contained in the Tender dated 28 December 2011 read as below:

"Any controversy or dispute arising out of this contract shall be referred to Secretary Revenue, Revenue Department and if the same is not resolved then the matter shall be referred to the Arbitrator appointed by the Revenue Department."

As per the submissions of the petitioner, the Secretary Revenue ought to have appointed an arbitrator in terms of the aforementioned clause. In case of the failure of the Secretary Revenue to appoint an arbitrator under the mutually agreed process, the petitioner could have instituted a petition under Section 11(6) of the Arbitration Act. Instead, the petitioner chose to approach the DIAC seeking appointment of an arbitrator. The High Court observed that once the award got set aside on 2 November 2018, the only option available to the petitioner was to approach the High Court under Section 11(6) of the Arbitration Act. Thus, the High Court opined that the negligence and or ignorance of the petitioner in failing to approach the correct forum within the prescribed time would not absolve the petitioner of the consequences.

The High Court observed that, notably, the entire claim of the petitioner in the first arbitration was ₹50,39,134 along with an interest of 18% per annum which came to ₹86,67,310. The parties negotiated for a settlement in the sum of ₹52,23,401 but the same could not be finalised. The arbitrator in the earlier round of arbitration had granted the petitioner a sum of ₹52,23,401 which is a little more than the principle amount, essentially on the basis of the admission of the respondent of its outstanding liability. As such, the petitioner was intending to re-agitate the same claim by asserting that there was no settlement *inter se* the parties.

The High Court observed that the petitioner admitted that the entire amount of ₹52,23,401 had already been received and the petitioner was only aggrieved of the interest component. In this regard, it was held that the petitioner could no longer make any claims in relation to instant matter on account of the fact that the same were barred in limitation.

Comment

The decision of the High Court follows the law laid by the Supreme Court in ***Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited***² and the subsequent line of decisions which held that the period of limitation for filing a petition under Section 11(6) of the Arbitration Act was three years. Since the award in the present case was rendered in November 2018, the petition filed under Section 11(6) of the Arbitration Act by the petitioner was rightly held to be patently time-barred.

² *Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited*, (2021) 5 SCC 738.

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