

**2022 LiveLaw (Del) 285**

IN THE HIGH COURT OF DELHI AT NEW DELHI

**CORAM: HON'BLE MR. JUSTICE VIBHU BAKHRU**

ARB.P. 1045/2021; 21<sup>st</sup> February, 2022

**GLOCALEGE CONSULTANTS PVT LTD *Versus* REC POWER DISTRIBUTION COMPANY LIMITED**

**Arbitration and Conciliation Act, 1996 - Merely filing a complaint with an unrelated government office expressing one's grievance does not constitute a notice under Section 21. (Para 8)**

**Arbitration and Conciliation Act, 1996 - Though it is a trite law that all contentious disputes are to be addressed by the Arbitration Tribunal, however in cases where there was no doubt that the claims raised were barred by limitation, the Court would decline to appoint an arbitrator. (Para 13)**

*Petitioner Through: Mr. Gaurav Prakash Pathak, Adv.*

*Respondents Through: Mr. Anand Varma and Ms. Adyasha Nanda, Advs.*

**1. The petitioner has filed the present petition, *inter alia*, praying as under:**

“(i) Allow the present petition and may further be pleased to appoint / nominate an Arbitrator;

(ii) To refer the entire disputes and differences that have arisen between the parties to the arbitration to be conducted by the Arbitration Tribunal.

(iii) To pass such other and further order as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

**2. The respondent had invited offers for “*Mobile Application Development for progress monitoring of Projects across PAN India on Real Time Basis*”. The petitioner was successful and the respondent awarded the contract for the aforesaid mobile application called “*Garv*” to the petitioner. The respondent issued a Work Order dated 14.09.2015 (hereafter ‘**the Work Order**’) to the petitioner to develop the said mobile application at a contract value of ₹19,45,000/-. The General Conditions of the Contract (hereafter ‘**the GCC**’) as applicable to the Work Order includes an Arbitration Clause that reads as under:**

1.1 Disputes under the agreement shall be settled by mutual discussion.

1.2 However, in the event amicable resolution or settlement is not reached between the parties, the differences of disputes shall be referred to and settled by the Sole Arbitrator to be appointed by Chairman, REC PDCL.

1.3 The arbitration proceedings shall be in accordance with the prevailing Arbitration and Conciliation Act, 1996 and Laws of India as amended or enacted from time to time.

1.4 The venue of the arbitration shall be New Delhi, India.

1.5 The fee & other charges of Arbitrator shall be shared equally between the parties.

1.6 The Arbitrator will give the speaking & reasoned award. The party will not be entitled to any Pendente lite interest during arbitration proceedings.”

### **“1.0 Disputes Resolution & Arbitration**

3. The petitioner avers that it had completed the work in accordance with the Work Order in the month of December, 2015. The work was also appreciated by the respondent company in its letter dated 05.04.2016. There is no dispute that the petitioner was paid the agreed consideration for the said work.

4. The petitioner claims that on 23.02.2016, the respondent sent an e-mail requesting for support in respect of a non-mobile application. According to the petitioner, the same was beyond the scope of work as agreed under Work Order dated 14.09.2015. The petitioner states that notwithstanding the same, the petitioner executed the said work and claimed that it was entitled to a sum of ₹56,58,006/- for the extra features and the services provided that were beyond the original scope of work under the Agreement. According to the petitioner, a sum of ₹6,35,960/- was paid in the month of April, 2016. However, the remaining amount of ₹50,22,046/- remains due and payable.

5. Mr. Varma, learned counsel appearing for the respondent, has opposed the present petition on two grounds. First, on the ground that the petitioner has not issued the notice under Section 21 of the A&C Act invoking the Arbitration Clause and second, that the claim sought to be raised is barred by limitation.

6. Insofar as the notice under Section 21 of the A&C Act is concerned, it is admitted that the petitioner did not send any notice to the respondent. The petitioner relies upon two communications. First, an e-mail dated 28.08.2019 sent to one Mr. Rajiv Sharma at the e-mail address: rajeev\_sharma@pfcindia.com. The contents of the said e-mail are relevant inasmuch as the petitioner claimed that “*REC officials have refused to pay us, so I request you to appoint a third party arbitrator who can give a fair opinion to close this matter.*” This e-mail is not addressed to the respondent. However, it does indicate that the respondent had declined to pay the amount as claimed by the petitioner.

7. The second communication relied upon by the petitioner is a complaint lodged with the Department of Administrative Reforms and Public Grievances. The same is addressed to the Prime Minister’s Office (PMO) requesting for release of the pending payments and also for “*APPOINTING AN INDEPENDENT THIRD PARTY TO ARBITRATE*”.

8. None of the said two communications are addressed to the respondent. Thus, there is merit in the contention that the petitioner has not invoked the Arbitration Clause. Merely, filing of a complaint with an unrelated government office expressing one’s grievance does not constitute a notice under Section 21 of the A&C Act.

9. Section 21 of the A&C Act reads as under:

**“21. Commencement of arbitral proceedings. – Unless otherwise agreed by the**

parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

**10.** It is apparent from the plain language of Section 21 of the A&C Act that the arbitral proceedings would commence when a notice under Section 21 of the A&C Act is received by the concerned party.

**11.** As noticed above, none of the two communications relied upon by the petitioner to claim that the provisions of Section 21 of the A&C Act have been complied with, were addressed to the respondent. Thus, there is no question of the respondent having received the same at the material time.

**12.** The second question to be addressed is whether the present petition can be rejected on the ground that the claims made by the petitioner are barred by limitation.

**13.** It is trite law that all contentious disputes are required to be addressed by the forum chosen by the parties – the Arbitration Tribunal. However, in cases where there is no vestige of doubt that the claims are barred by limitation, the Court would decline to appoint an arbitrator. In ***Bharat Sanchar Nigam Limited and Anr. vs. M/s Nortel Networks India Private Limited: (2021) 5 SCC 738***, the Supreme Court had observed as under:

“47. It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal.

“48. Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time barred by over 5 ½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 04.08.2014. The notice of arbitration was invoked on 29.04.2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable Section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.”

**14.** In the present case, there is admittedly no communication issued by the respondent acknowledging any liability for the amount as claimed by the petitioner. According to the petitioner, it had completed the works in the year 2016. Whilst, the respondent has paid an amount of ₹6,35,960/- in the month of April, 2016, it had not cleared the balance.

**15.** The learned counsel appearing for the petitioner states that the petitioner had sent several communications – which are not on record – seeking payment of the pending amount; however, the respondent had not responded to the said communications or

had acknowledged in any manner that any payment was due to the petitioner. He states that the petitioner is also unable to trace a copy of the invoice and is not aware as to when the same was sent. It is for this reason, that the petitioner has averred in the present petition that the claim for ₹56,58,006/- was made in the year 2016 without referring to any particular date.

**16.** There is a communication addressed to the PMO web portal, which the petitioner claims was filed in the year 2019. The respondent had sent an e-mail dated 14.01.2021 to the Prime Minister's Office, in connection with the complaint made by the petitioner to the Prime Minister's Office on 03.12.2018. The respondent claimed that it had released the payments as per the invoices raised by the petitioner and the Work Order. The respondent further claimed – and the same is not disputed by the petitioner – that no separate work order was issued for any additional work as claimed and no financial commitment was made by the respondent.

**17.** The limited question to be addressed is as to whether it is *ex facie* clear that the claim made by the petitioner is barred by limitation. Admittedly, there is no communication acknowledging any payments due to the petitioner. It is the petitioner's case that the respondent had denied the payments as claimed by it and had not cleared the same since 2016. In this view of the matter, there is no scope to entertain even an iota of doubt that the petitioner's claim is barred by limitation.

**18.** In view of the above, this Court does not consider it apposite to accede to the petitioner's prayer for appointing of an Arbitrator, both, on the ground that it had not issued a notice as required under Section 21 of the A&C Act and that the petitioner's claim for payment of work done in 2016 are *ex facie* barred by limitation.

**19.** The petition is, accordingly, dismissed.