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SUPREME COURT ON LIMITATION PERIOD IN ARBITRATION

A. Introduction

Supreme Court (“SC”) in *M/s B and T AG*,¹ on May 18, 2023, held parties' merely engaging in negotiations will not postpone limitation period for Arbitration.

B. Facts:

1. In 2009, Ministry of Defence (“MoD”) floated an urgent tender for procurement of Sub-Machine Guns under fast track procedure.
2. M/s. B and T AG (“B&T”) participated in the tender process and submitted its bid. In 2010, tender was opened and B&T was declared the lowest acceptable bidder. After due negotiations, the contract was executed in 2012.
3. On account of delay in the supply of goods beyond the contractual time period, MoD deducted Liquidated damages (“LD”) and encashed the Bank Guarantee (“BG”) in September 2016. Pursuant to this, dispute arose between parties.
4. The parties were in negotiation until 2019 but could not arrive at any settlement.
5. In 2021, vide a notice, B&T invoked arbitration against MoD.
6. In 2023, B&T filed petition for appointment of arbitrator.²

C. Contentions of B&T:

1. The contract stipulated that all disputes arising out of the contract, shall be settled by ‘bilateral discussion’.
2. On September 2017, B&T wrote to MoD for reconsidering the decision of wrongful deduction of LD and encashment of BG, which was rejected. After this, the parties continued negotiations until 2019.
3. They relied on SC’s *Geo and Company*³ where it was held that the time spent in pre-arbitration negotiations, held in good faith may be excluded for the purpose of computation limitation period.
4. MoD did not object to the invocation of arbitration, but it objected to appointment of arbitrator.
5. The issue of limitation is mixed question of law and fact can be looked into by the Arbitral Tribunal.
6. Breaking point of negotiation cannot be gone into while deciding Section 11⁴ petition.

¹*M/s. B and T AG vs. Ministry of Defence* (18.05.2023 - SC): MANU/SC/0601/2023.

² Section 11 of Arbitration and Conciliation Act, 1996.

³*Geo Miller and Co. Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.* (03.09.2019 - SC): MANU/SC/1198/2019.

⁴ Appointment of Arbitrators

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D. Contentions of MoD:

1. It argued that the cause of action for the Section 11 petition by B&T arose on September 26, 2016, when the amount was deducted and credited to the Government's account.
2. Notice for arbitration was invoked in November, 2021, after 5 years. Therefore, this petition which is filed in 2023 is hopelessly barred by limitation.
3. As per Article 137 of the Limitation Act, the limitation period is 3 years, which expired way back on September 25, 2019.

E. SC's Judgment & Reasoning:

1. SC relying on *LK Abuja* case⁵ which laid down the ratio with regard to limitation period applicable in arbitration proceedings and *J.C Budbraja* case⁶ which drew a fine distinction between period of limitation for filing of a petition and as to claims barred by time.
2. In *Bharat Sanchar Nigam Limited* case,⁷ which held that in cases where claim are *ex facie* time barred, the court may refuse to entertain Section 11 petition.
3. SC even observed that it is necessary for the Parliament to effect an amendment to Section 11 of the Act and prescribe limitation period.
4. While placing reliance on letter dated February, 2016, the Bench took the view that dispute between the parties had cropped up in 2014 itself. B&T cannot contend that the limitation period stood extended as it continued to negotiate with MoD till 2019.
5. SC dismissed the petition holding that:
 - “[W]hen the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the Government account, that was the end of the matter. This “Breaking Point” should be treated as the date at which the cause of action arose for the purpose of limitation.”⁸
 - “Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the “cause of action” for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating.”⁹

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⁵ *Union of India (UOI) and Ors. v. L.K. Abuja and Co.* (05.04.1988 - SC): MANU/SC/0544/1988.

⁶ *J.C. Budbraja v. Chairman, Orissa Mining Corporation Ltd. and Ors.* (18.01.2008 - SC): MANU/SC/0602/2008.

⁷ *Bharat Sanchar Nigam Ltd. and Ors. v. Nortel Networks India Pvt. Ltd.* (10.03.2021 - SC): MANU/SC/0171/2021.

⁸ Paragraph No. 62 of the Judgment.

⁹ Paragraph No. 63 of the Judgment.

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