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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.05.2025

\+ **ARB.P. 1494/2024**

NATIONAL RESEARCH DEVELOPMENT CORPORATION & ANR. .....Petitioners

Through: Mr. Joydeep Sarma, Mr. Kaushal Kapoor, Advs.

versus

M/S ARDEE HI-TECH PVT. LTD. .....Respondent

Through: Mr. Aditya Ranjan, Ms. Siny Sara Varghese, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("*the Act*") seeking appointment of an Arbitrator for adjudication of disputes between the parties.

2. In the present case, the petitioner Nos.1 and 2 agreed to partially fund the project of respondent by financial aid to the tune of Rs. 90 lakhs and consequently, the parties entered into a Tripartite Agreement dated 23.11.2010. Relevant clauses of the said Agreement read as under:-

> *"11. UTILIZATION OF TECHNOLOGY*
>
> *(e) AHTPL shall assign the technology proposed to be developed under this project with right to license the*

intellectual property owned by them and transfer the know-how document to NRDC within 60 days from the occurrence of any of the following:

(i) If AHTPL refuses to exercise its rights, within one year of completion of the "Project", its option to commercialise technology.

(ii) If AHTPL fails to commercialise technology within four years of completion of the project.

(iii) If AHTPL fails to execute agreement referred to in clause 11(a) above."

3. The arbitration clause is clause 15 of the said Agreement which reads as under:-

"15. ARBITRATION AND JURISDICTION

a) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this Agreement including the rights or liabilities or any claim or demand of any Party (or its extent) against other party or its sub-contractor or in regard to any matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this Agreement such disputes or differences shall be referred to the sole arbitration of the Secretary of Department of Legal Affairs, Govt. of India or his nominee. A reference to the arbitration under this clause shall be deemed to be submission within the meaning of the Arbitration and

Conciliation Act, 1996 and any modification or re-enactment thereof and the rules framed thereunder for the time being in force.

b) i) The venue of the Arbitration shall be at Delhi.

ii) Each Party shall bear and pay its own cost of the arbitration proceedings unless the arbitrator otherwise decides in the award.

iii) The provision of this clause shall not be frustrated, abrogated or become in-operative, notwithstanding this Agreement expires or ceases to exist or is terminated or revoked or declared unlawful."

4. The project was completed in January, 2015 and the petitioner No.2 *vide* letter 19.05.2015 formally informed the respondent regarding completion of the project.

5. According to the petitioner, the first royalty payment became entitled to be paid on 31.03.2016 and the second instalment on 31.03.2017. The petitioner demanded the said royalties but since the respondent failed to pay the same, the arbitration clause was initiated.

6. *Vide* Award dated 03.09.2019, learned Arbitrator held that the claims of the petitioners were premature as there was no material to show that the respondent had started commercial sale of the product in question.

7. The said Award was challenged by the petitioner in section 34 petition and the same was dismissed on 11.07.2022. Thereafter, the said judgment dismissing section 34 petition was also challenged in

section 37 petition and the same was dismissed as withdrawn*vide* order dated 08.07.2024.

8. Subsequently, the petitioner invoked arbitration for claiming damages for non-compliance of clause 11(e) of the Agreement on the ground that the respondent failed to commercialize the technology [11(e)(ii) quoted above] on 05.04.2024 and thereafter, the present petition.

9. Mr. Ranjan, learned counsel for the respondent states that in the present case, the letter of 05.04.2024 is not a notice invoking arbitration and is only a demand letter.

10. Additionally, in terms of the arbitration clause, the petitioner already has named the arbitrator and the matter should have been referred to the same arbitrator as per the arbitration clause.

11. I have heard learned counsel for the parties.

12. The Hon'ble Supreme Court in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd. &Anr., 2024 INSC 849*** has held that a referral Court is only to see if the invocation is within 3 years and the remaining issues are to be left for the adjudication of the arbitrator. Relevant paragraphs are extracted below:-

> *"39.Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the Act, 1996, the referral court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the*

petitioner are time barred. Such a determination must be left to the decision of the arbitrator. After all, in a scenario where the referral court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the arbitral tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.

40.As observed by us in Krish Spinning (supra), the power of the referral court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral court delves into the domain of the arbitral tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims. Moreover, the Courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the Courts may take a second look at the adjudication done by the arbitral tribunal at a later stage, if considered necessary and appropriate in the circumstances."

13. In the present case, the project was completed in January, 2015. In

terms of Clause 11(e)(ii), in case of non-commercialisation, the respondent was to assign the technology within 4 years plus 60 days. Hence, the limitation period was to start from March, 2019 and the same will end in March, 2022 i.e. after 3 years.

14. The question before me is whether the petitioner is entitled to the benefit of Section 14 of the Limitation Act, 1963.

15. It is not a case where the petitioner was pursuing a right remedy before a wrong forumbut it is a case where the petitioner was pursuing a mistaken remedy.

16. Mr. Sarma, learned counsel for the petitioners, in this regard relies upon the judgment of this Court in ***Delhi Metro Rail Corporation v. Traffic Media India Pvt. Ltd., 2019:DHC:3147,***and more particularly paragraphs 24, 25, 27 and 28 which read as under:-

> *"24.In RoshanlalKuthalia& Others vs. R.B. Mohan Singh Oberoi, (1975) 4 SCC 628, the Supreme Court held that any circumstance, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on merits, comes within the scope of Section 14 and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy to one who has a right.*
>
> *25.In Union of India and Others vs. West Cost Paper Mills Ltd. and Another(III), (2004) 3 SCC 458, the Supreme Court again explained the scope of section 14 of the limitation act in the following words:-*
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> > *"14……..However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined*

in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression "other cause of like nature" came up for the consideration of this Court in RoshanlalKuthalia v. R.B. Mohan Singh Oberoi and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right."

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27.In Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others, (2008) 7 SCC 169, the Supreme Court explained the policy of Section 14 and the approach to be adopted by the Courts in the following words:-

"22. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is

dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this

Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

28.Applying the above test, it cannot be held that the petitioner was not entitled to the benefit of Section 14 of the Limitation Act for the exclusion of the time during which the Writ Petition remained pending before this Court. The Arbitrator has also considered the above issue in the Impugned Award and has held that the claim of the petitioner was not barred by the Law of Limitation."

17. Mr. Ranjan, learned counsel for the respondent, relies upon the judgments of the Hon'ble Supreme Court in ***Zafar Khan&Ors. v. Board of Revenue, U.P. & Ors***. ***(1984) (Supp.) SCC 505***and ***Deena (Dead) Through LRs v. Bharat Singh (Dead) Through LRs. & Ors. (2002) 6 SCC 336***, to urge that the case of the petitioner was dismissed on merits and hence, there is no applicability of Section 14 of the Limitation Act, 1963.

18. The first arbitration proceedings initiated by the petitioner were based on a mistaken belief that the respondent had commercialised the technology and hence, the petitioner was entitled to royalty.The Arbitrator held that till the date of the Award, there was no commercialisation of the technology and hence, the claims of the petitioner were premature.The Award was assailed in Section 34 which was dismissed on 11.07.2022 and thereafter, Section 37 appeal was dismissed as withdrawn on 08.07.2024.

19. During this entire period, the petitioner was availing its rights under a mistaken belief that the respondent has commercialised the technology for which the moneys were advanced by the petitioners. It is only thereafter that the petitioner served notice invoking arbitration on 05.04.2024 under clause 11(e)(ii) i.e. failure to commercialise the technology.

20. The law with respect to section 14 of Limitation Act, 1963 has been clarified in the judgment of the Hon'ble Supreme Court in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Ors., (2008) 7 SCC 169***, wherein the Court has held that Section 14 is intended to provide relief even in cases of mistaken remedy.

21. Time and again, the Hon'ble Supreme Court as well as this Court has held that the scope of section 14 of Limitation Act, 1963 must be a liberal interpretation rather than a restrictive interpretation.

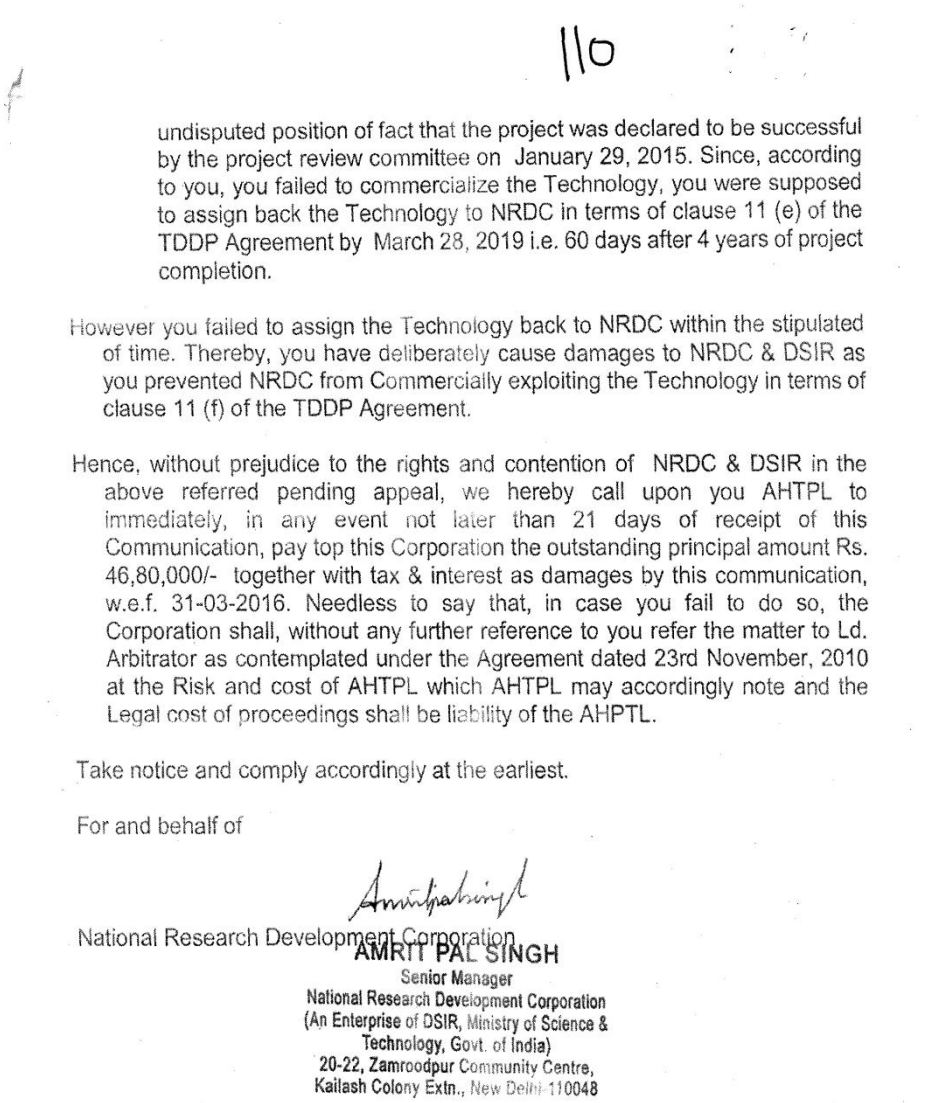
22. As noted above, the limitation period was to end in March, 2022. In light of the above principles and applying the benefit of section 14 of Limitation Act, 1963, the period starting from filing section 34 petition before the Saket Courts, New Delhi i.e. 04.12.2019 till the order of section 37 petition i.e. 08.07.2024 is to be excluded and the benefit of the said exclusion must be given to the petitioner.

23. The petitioner has taken three months to file section 34 petition from the date of passing of the Award. Hence, the remaining period i.e. 2 years 9 months shall be starting from 08.07.2024.The notice issued on 05.04.2024 is very well within the limitation period.

24. Another contention of the learned counsel for the respondent is that

the notice dated 05.04.2024 is not a notice under Section 21 of the Act, but is only a demand letter.

25. Relevant portion of the said notice is extracted below:-



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undisputed position of fact that the project was declared to be successful by the project review committee on January 29, 2015. Since, according to you, you failed to commercialize the Technology, you were supposed to assign back the Technology to NRDC in terms of clause 11 (e) of the TDDP Agreement by March 28, 2019 i.e. 60 days after 4 years of project completion.

However you failed to assign the Technology back to NRDC within the stipulated of time. Thereby, you have deliberately cause damages to NRDC & DSIR as you prevented NRDC from Commercially exploiting the Technology in terms of clause 11 (f) of the TDDP Agreement.

Hence, without prejudice to the rights and contention of NRDC & DSIR in the above referred pending appeal, we hereby call upon you AHTPL to immediately, in any event not later than 21 days of receipt of this Communication, pay top this Corporation the outstanding principal amount Rs. 46,80,000/- together with tax & interest as damages by this communication, w.e.f. 31-03-2016. Needless to say that, in case you fail to do so, the Corporation shall, without any further reference to you refer the matter to Ld. Arbitrator as contemplated under the Agreement dated 23rd November, 2010 at the Risk and cost of AHTPL which AHTPL may accordingly note and the Legal cost of proceedings shall be liability of the AHPTL.

Take notice and comply accordingly at the earliest.

For and behalf of

National Research Development Corporation

AMRIT PAL SINGH
Senior Manager
National Research Development Corporation
(An Enterprise of DSIR, Ministry of Science & Technology, Govt. of India)
20-22, Zamroodpur Community Centre,
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26. I have already held in ***The Prasar Bharati v. Visual Technologies India Pvt. Ltd., ARB.P. 558/2023, decided on 18.03.2024***, that there is fixed format to issue notice invoking arbitration. The relevant

paragraphs of the said judgment read as under:

> *"8. Section 21 of the 1996 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."*
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> *9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-*
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> a. *The dispute between the parties.*
> b. *The demand to resolve the disputes as per the envisaged arbitration clause.*
> c. *In case, the disputes are not resolved the intention to resort to the arbitral process.*
> d. *The notice must be sent to the respondent."*

27. To my mind, the notice dated 05.04.2024 meets the above parameters as the last portion of the said notice clearly indicates the intent of the

petitioner that in case the amount is not paid, the matter shall be referred to the learned Arbitrator.

28. Hence, I am of the view that the argument of the learned counsel for the respondent that the notice dated 05.04.2024 is not a notice invoking arbitration and is only a demand letter is meritless.

29. As per the arbitration agreement, the disputes between the parties were to be referred to the sole arbitration of Secretary of Department of Legal Affairs, Govt. of India or his nominee.

30. In the present case, both the petitioners are government entities and hence, the appointment of the Secretary of Department of Legal Affairs, Government of India or his nominee would be hit by the judgments of the Hon'ble Supreme Court in***Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760*** as well as ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co., 2024 SCC OnLine SC 3219.*** The relevant portion of ***Central Organisation for Railway Electrification (supra)*** reads as under:-

> *"169. In view of the above discussion, we conclude that:*
>
> *a. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;*
>
> *b. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;*
>
> *c. A clause that allows one party to unilaterally appoint a*

sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

d. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE (supra) is unequal and prejudiced in favour of the Railways;

e. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and

g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-

member tribunals."

31. In view of the aforesaid law, the petitioner, rightly so, did not unilaterally appointed an arbitrator as the per clause quoted above and hence, the petitioner has approached this Court seeking appointment of an Arbitrator.

32. For the said reasons, the petition is allowed and the following directions are issued:-

i. Mr. Ritesh Kumar, Adv. (Mob. No. 9891245343) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii. The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC') and as per Rules of DIAC.

iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi. The parties shall approach the learned Arbitrator within four weeks from today.

33. The petition is disposed of accordingly.

JASMEET SINGH, J

MAY 6, 2025 / (MS)

(Corrected and released on 16.05.2025)

Click here to check corrigendum, if any