

Offshore Infrastructures Ltd. Vs. M/s. Bharat Petroleum Corporation Ltd.

Civil Appeal Nos. _____ of 2025 arising out of SLP (C) No. 22105-22106 of 2024 · Supreme Court of India · 2025-10-07 · Dipankar Datta · Augustine George Masih · F2J-C-1408

Full judgment text

Offshore Infrastructures Ltd. Vs. M/s. Bharat Petroleum Corporation Ltd.

[Civil Appeal Nos. _____ of 2025 arising out of SLP (C) No. 22105-22106 of 2024]

Augustine George Masih, J.

1. Leave granted.

2. The instant Civil Appeals assail the Judgment and Order dated 10.04.2024 passed in Review Petition No. 76 of 2024 and Judgment and Order dated 19.12.2023 passed in Arbitration Case No. 23 of 2022 by the High Court of Madhya Pradesh at Jabalpur ("High Court").

3. The High Court vide Judgment and Order dated 19.12.2023 in Arbitration Case No. 23 of 2022 has refused to appoint an arbitrator and dismissed the application filed under section 11 of the Arbitration and Conciliation Act, 1996 ("1996 Act") by the Appellant on the ground that the application is time-barred. The subsequent Review Petition No. 76 of 2024 filed by the Appellant was also dismissed by the High Court vide Judgment and Order dated 10.04.2024.

4. The Appellant herein is Offshore Infrastructures Limited, a Company incorporated under the Companies Act, 1956, having its registered office at Mulund Goregaon, Mulund (West) Mumbai. The Respondent is Bharat Oman Refineries Limited, which was merged to M/s Bharat Petroleum Corporation Limited with effect from 01.07.2022, having its registered office at Bharat Bhavan Ballard Estate, Mumbai.

5. The crux of the matter is that the Respondent had invited tenders for execution of composite works pertaining to the establishment of a new Modular Penex Unit along with associated works required for the revamp and capacity enhancement at the Bina Refinery. Upon completion of the tendering process, the work was awarded to the Appellant vide letter of acceptance dated 31.12.2016. As per the terms of letter of acceptance, the work awarded to the Appellant was to be completed within a period of five months, i.e. 30.05.2017.

However, the work could not be completed within the stipulated time, and ultimately the work came to be completed on 31.01.2018. The Appellant raised the final Bill bearing RA Bill No. 7 on 20.03.2018 and thereafter a "No Claim Certificate" was issued by the Appellant on 03.10.2018. The completion certificate was issued on 05.02.2019. The final bill was released on 26.03.2019. The Respondent released part payment to the Appellant on 11.06.2019 and liquidated damages of 5% was deducted on account of delay. The Appellant on 26.04.2021, issued a consolidated claim of all its outstanding dues.

6. Subsequently, the Appellant on 14.06.2021 issued a notice to Managing Director of the Respondent for appointment of Arbitrator as per Clause 8.6 of General Conditions of the Contract ("GCC") stating that as per Clause 8.6 of GCC, the Arbitrator named is Managing Director of Bharat Oman Refineries Limited or an officer of Bharat Oman Refineries Limited who may be nominated by the Managing Director, however, in view of the provisions of the 1996 Act (as amended by Act 3 of 2016, w.e.f. 23.10.2015), neither the Managing Director nor an officer is entitled to act as an Arbitrator in the matter, therefore suggest names of at least four qualified persons unconnected with either party to be selected as Sole Arbitrator in the matter. The Respondent refused to entertain the claims via communication dated 02.07.2021.

7. Aggrieved by the failure of the Respondent to appoint the Arbitrator, the Appellant has filed Arbitration Case No. 23 of 2022 under Section 11 (6) of the 1996 Act before the High Court seeking appointment of Sole Arbitrator.

8. The High Court vide Judgment and Order dated 19.12.2023 dismissed the Arbitration Case No. 23 of 2022 holding that as per Schedule 26 (Periods of Limitation) and as per Section 2(j) & 3 Part-I of Limitation Act, 1963, the time from which the period of limitation starts has to be taken as the date on which accounts in writing were signed by the Appellant and also from the date of execution of reconciliation statement of foreclosure and settlement agreement. Since the final Bill was raised on 20.03.2018 and further the "No Claim Certificate" was issued on 03.10.2018, the limitation would run from the date of issuance of "No Claim Certificate". Therefore, the period of three years has lapsed on 02.10.2021 and the application for appointment of Arbitrator has been filed by the Appellant on 14.03.2022, which is much beyond the period of limitation.

9. The Judgment dated 19.12.2023 of the High Court was sought to be reviewed by the Appellant by filing a Review Petition No. 76 of 2024. The High Court on 10.04.2024 has dismissed the review petition holding that the cause of action accrued to the Appellant at the date of issuance of "No Claim Certificate" on 03.10.2018, and the Appellant ought to have filed the application for appointment of Arbitrator within three years from 03.10.2018, which was not done. The Appellant challenged both the Judgment and Order dated 19.12.2023 and Judgment and Order dated 10.04.2024 before this Court by way of the present appeals.

10. The learned Counsel for the Appellant submits that the application under Section 11 (6) of the 1996 Act was filed well within the period of limitation. To substantiate his contentions, reliance is placed upon the decision of this Court in *Arif Azim Company Limited v. Aptech Limited*¹, which held that the period for the purpose of filing application for appointment of arbitrator commences only upon issuance of a valid notice invoking the arbitration followed by refusal or failure of the other party to appoint the arbitrator in accordance with agreed procedure.

11. He further submits that even if it is assumed that the cause of action accrued earlier on 03.10.2018, the part payment made by the Respondent on 11.06.2019 has extended the period of limitation under section 19 of the Limitation Act, 1963. Relying upon *In Re: Cognizance for Extension of Limitation*², he submits that the limitation is covered by the COVID-19 extension Order dated 10.01.2022 passed by this Court, which excluded the period from 15.03.2020 to 28.02.2022 from computation of limitation.

12. Finally, it is contended that in *Perkins Eastman Architects DPC and Another v. HSCC (India) Limited*³, in an equivalent arbitration clause, where the appointing authority had failed to appoint an arbitrator till the time of filing of Section 11 (6) application, this Court had appointed an Arbitrator. The arbitration agreement in the present case was drafted prior to the 2015 Amendment in the 1996 Act, with the evident intent to provide for arbitration but power of appointing arbitrator was with the Managing Director of the Respondent, courts have upheld arbitration agreements including similar clauses and appointed arbitrators, despite disqualification of the named authority.

13. Per contra, the learned Counsel for the Respondent while supporting the Judgment and Order of the High Court submits that the cause of action accrued to the Petitioner on the date when final bill was raised on 20.03.2018, and according to the Appellant amount became due on or before 21.04.2018 i.e. 30 days from the date of submission of bill. The Appellant ought to have invoked arbitration within three years from 21.04.2018 by filing an application which was not done.

14. He further contends that categorial stipulation contained in Clause 8.6 (a) of GCC empowers the Managing Director or his nominee alone to act as Sole Arbitrator, as subsequent legislative changes in the 1996 Act through amendments renders such a contractual provision otiose and inoperative, thereby such arbitration clause ought to be deemed to have ceased to exist. Therefore, the arbitration mechanism itself stands effaced, disentitling the Appellant to invoke arbitration.

15. Having heard the Counsel for the parties and upon perusal of material on record, the issues for consideration are:-

(i) whether the court has power to appoint an arbitrator when the clause providing the arbitration mechanism has become bad in law pertaining to certain statutory amendments and

(ii) whether the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the Appellant is within the period of limitation.

16. It is pertinent to refer to the decision of this court in *Perkins (supra)*, wherein a coordinate Bench of this Court while following the decision in *TRF Limited v. Energo Engineering Projects Limited*⁴

categorically held that once the Chairman and Managing Director of the respondent therein became ineligible by the virtue of Section 12(5) read with the Seventh Schedule of the 1996 Act (as amended by Act 3 of 2016 w.e.f. 23.10.2015), the ineligibility also extends to power of nomination, thereby rendering any appointment made by him legally unsustainable. Consequently, this Court appointed an independent sole arbitrator holding that jurisdiction under Section 11(6) of the 1996 Act is not ousted merely because an appointment has already been made by the respondent if such appointment is ex facie invalid or contrary to the agreed procedure.

17. Similarly, in *Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Limited*⁵ this Court underscored that the legislative intent behind the 2015 amendment of inserting Section 12(5) of the 1996 Act is to secure neutrality of arbitrators. By virtue of its nonobstante clause, any person whose relationship with the parties falls within the disqualifications provided in Seventh Schedule is rendered ineligible to act as an arbitrator, this is notwithstanding any stipulation provided in the arbitration clause.

If any arbitration clause runs contrary to the mandate provided in Section 12(5) of the 1996 Act, the power to appoint an independent arbitrator is vested with the court under section 11 of the 1996 Act, a principle consistent with pre-amendment jurisprudence under Section 11(8) of 1996 Act where courts had, even earlier, overridden restrictive arbitration clauses to ensure the appointment of impartial arbitrators.

18. Coming to the case in hand, the Clause 8.6 of GCC governs the arbitration mechanism. The arbitrator named in this Clause is Managing Director of Bharat Oman Refineries Limited or an officer of Bharat Oman Refineries Limited who may be nominated by the Managing Director. Subsequent amendments in the 1996 Act, as referred above, have made such clause bad in law and Managing Director or officer nominated by the Managing Director become ineligible by the operation of law to be appointed as Arbitrator.

19. The Respondent contends that once the arbitration clause referred to in the GCC has become obsolete and non-operative, it would render the entire arbitration mechanism non-existent therefore the Appellant cannot file an application for appointment of arbitrator.

20. We are not persuaded by this submission of the Counsel for Respondent. The very existence of the arbitration clause in the GCC referring to all disputes to arbitrator is the core part of contract. Merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referring the dispute for adjudication to arbitrator would be rendered nugatory.

The amendment in the statute has been enacted with the legislative intent to enforce neutrality of the arbitrator and bring impartiality in arbitration proceedings by virtue of Section 12(5) of the 1996 Act. It cannot be justified to literally interpret the clause in the contract in a manner or at the cost of the entire arbitration mechanism itself being abandoned. The arbitration agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to pursue the intended dispute redressal mechanism of contract.

Therefore, it cannot be said that non-operation of arbitration clause in GCC will result into forgoing of entire arbitration mechanism and rendering the Appellant disentitled for seeking appointment of arbitrator. The Appellant is, therefore, entitled to file application under section 11(6) of the 1996 Act for appointment of arbitrator and thereby the power is vested with the court to appoint an arbitrator upon filing of such application.

21. The next aspect which merits consideration is whether the application for appointment of arbitrator filed by the Appellant is within the period of limitation. It would be apposite to refer to the decision in *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*⁶, where a three-Judge Bench of this court while dealing with similar issue has held that the cause of action in respect of arbitration application arises when the final bill handed over to the respondent becomes due, and further correspondences between the parties subsequent to the due date of bill would not extend the time of limitation. The relevant portion of the judgment is reproduced herein:-

"19. Undoubtedly, a different scheme has been evolved under the 1996 Act. However we find that the same principles continue to apply with respect to the applicability of the law of limitation to an application under Section 11(6) of the 1996 Act as laid down in the decisions dealing with judicial

appointment of an arbitrator under Sections 8 and 20 of the 1940 Act.

20. Our finding is supported by the decision of a three- Judge Bench of this Court in *Grasim Industries Ltd. v. State of Kerala* [(2018) 14 SCC 265 : (2018) 4 SCC (Civ) 612]. In *Grasim Industries*, similar to the present case, the arbitration agreement provided for reference to be made under the 1940 Act. However the appellant raised their claim in 2002, attracting the application of the 1996 Act. This Court was therefore faced with the issue of whether an application for appointment of an arbitrator under the 1996 Act would be barred by limitation in respect of the appellant's claim.

This Court found that, in view of Section 28 of the Contract Act, 1872, the parties in the arbitration agreement could not stipulate a restricted period for raising a claim. However, the limitation period for invocation of arbitration would be three years from the date of the cause of action under Article 137 of the Limitation Act, 1963. However in the facts of that case, this Court found that certain claims had arisen within the three-year limitation period and hence, could be allowed.

21. Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court that the appellant's cause of action in respect of Arbitration Applications Nos. 25/2003 and 27/2003, relating to the work orders dated 7-10-1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation.

Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose i.e. 8-2- 1986. Similarly, with respect to Arbitration Application No. 28/2003 relating to the work order dated 3-5-1985, the respondent has stated that final bill was handed over and became due on 10-8-1989. This has not been disputed by the appellant. Hence the limitation period ended on 10-8-1992. Since the appellant served notice for appointment of arbitrator in 2002, and requested the appointment of an arbitrator before a court only by the end of 2003, his claim is clearly barred by limitation.

24. In the present case, the appellant has not disputed the High Court's finding that the appellant itself had handed over the final bill to the respondent on 8-2-1983. Hence, the holding in *Inder Singh Rekhi v. DDA* [(1988) 2 SCC 338] will not apply, as in that case, the applicant's claim was delayed on account of the respondent's failure to finalise the bills. Therefore the right to apply in the present case accrued from the date on which the final bill was raised (see *Union of India v. Momin Construction Co.* [(1997) 9 SCC 97]).

29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."

22. In the present case, the final bill was raised by the Appellant on 20.03.2018 and the amount became due on 21.04.2018 i.e. 30 days from the date of submission of bill, as submitted by the Appellant. The period of limitation to file an application under section 11 (6) 1996 Act would start from 21.04.2018 and an application for appointment of arbitration ought to be filed within three years from such date i.e. on or before 21.04.2021. However, the Appellant has filed the Arbitration Case No. 23 of 2022 before the High Court on 15.03.2022 which is beyond the period of three years.

23. In normal course of action, the application filed by the Appellant would have been hit by the statutory bar of three years, however, it is essential to refer to Order dated 10.01.2022 of this Court in *In Re: Cognizance for Extension of Limitation* (supra), where a three-Judge Bench of this Court has held that in view of COVID-19 pandemic period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The relevant portion of which reads thus:-

"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021 , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3- 2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

24. The above decision came to be delivered by this Court considering the hardship faced by the people during COVID-19. It would be unjust and detrimental to not consider this while deciding upon the period of limitation in the present case. Therefore, the benefit of the period from 15.03.2020 to 28.02.2022 must be given to the Appellant and this period need to be excluded while counting the period of limitation for filing application for appointment of arbitrator. Once, this period is excluded, it can be concluded that the Appellant's application for appointment of arbitrator under section 11 (6) of the 1996 Act before the High Court was moved within the period of limitation. It is held accordingly.

25. In view of the aforesaid, the Judgment and Order dated 10.04.2024 passed in Review Petition No. 76 of 2024 and Judgment and Order dated 19.12.2023 passed in Arbitration Case No. 23 of 2022 by the High Court cannot sustain and are, therefore, set aside.

26. Consequently, we direct that the matter shall stand referred to the Delhi International Arbitration Centre, which shall proceed to appoint an arbitrator, who shall decide the matter in accordance with law and rules, as applicable.

27. The present appeals are allowed in the above terms.

28. There shall be no order as to costs.

29. Pending application(s), if any, shall be disposed of.

.....J. [Dipankar Datta]

.....J. [Augustine George Masih]

New Delhi;

October 07, 2025.

1 (2024) 5 SCC 313

2 (2022) 3 SCC 117

3 (2020) 20 SCC 760

4 (2017) 8 SCC 377

5 (2017) 4 SCC 665

6 (2020) 14 SCC 643

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