

State of West Bengal & Ors.

v.

M/s B.B.M. Enterprises

(Civil Appeal No. 4320 of 2026)

09 April 2026

[Sanjay Kumar and K. Vinod Chandran, JJ.]

Issue for Consideration

Whether a notice seeking commencement of arbitration, issued on 02.06.2022, could set in motion the process of resolution of a dispute regarding a work completed as early as on 30.07.2000.

Headnotes[†]

Arbitration and Conciliation Act, 1996 – ss.42, 43 – Limitation Act, 1963 – Article 18 – Work completed in the year 2000 – Notice seeking commencement of arbitration issued after 21 years in 2022 – By way of the impugned judgment, Arbitrator appointed by High Court – Sustainability:

Held: Unsustainable – Arbitration though is an alternate dispute resolution system, which has to be encouraged, it cannot deviate from the fundamental principle that law favours the diligent and not the indolent – For recovery of amounts, as in this case, the limitation is three years as provided in Article 18 of the Limitation Act, 1963 – The commencement of arbitration proceedings as per sub-section (2) of s.43 being the date referred in s.21, which is the date on which a request for initiation of arbitration is received by the respondent, the claim itself was hopelessly time barred, the notice having been issued after 21 years – Despite the work having concluded on 30.07.2000, the petitioner did not attempt to raise a bill or initiate the arbitration proceedings till 2022, when a notice requiring commencement of arbitration proceedings was first issued – Appellant slept over its claim for 21 years before the notice seeking arbitration was issued in 2022; an *ex-facie* dead claim – High Court erred insofar as finding failure on the part of the Engineer-in-Charge to determine the final amount payable, having extended the limitation – If there was such a failure on the part of the Engineer-in-Charge, it was for the contractor to have initiated arbitration then and there – Neither was notice issued

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for arbitration nor was a final bill raised or a request made to determine the total amount payable – Order initiating arbitration set aside. [Paras 5, 6]

Case Law Cited

Vishram Varu and Company v. Union of India (2023) 12 SCC 588; *Arif Azim Company Limited v. Aptech Limited* [2024] 3 SCR 73 : (2024) 5 SCC 313; *Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another* [2024] 12 SCR 108 : (2025) 1 SCC 502; *Vidya Drolia and Ors. v. Durga Trading Corporation* [2020] 11 SCR 1001 : (2021) 2 SCC 1; *Bharat Sanchar Nigan Limited and Anr. v. Nortel Networks India Private Limited* [2021] 2 SCR 644 : (2021) 5 SCC 738; *Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re.* [2023] 15 SCR 1081 : (2024) 6 SCC 1 – referred to.

List of Acts

Arbitration and Conciliation Act, 1996; Limitation Act, 1963.

List of Keywords

Claim *ex-facie* time barred; Claim hopelessly time barred; Section 42 of the Arbitration and Conciliation Act, 1996; Limitation for recovery of amounts; Article 18 of the Limitation Act, 1963; Law favours the diligent; *Ex-facie* dead claim; Notice seeking commencement of arbitration issued after 21 years.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4320 of 2026

From the Judgment and Order dated 27.06.2024 of the High Court at Calcutta in AP No. 535 of 2022.

Appearances for Parties

Advs. for the Appellant(s):

Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Varij Nayan Mishra.

Advs. for the Respondent(s):

Sudhanshu Choudhari, Sakya Sen, Sr. Advs., Sarad Kumar Singhania, Yash Singhania, Ms. Nilanjana Adhya.

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Judgment / Order of the Supreme Court

Order

1. The neat question arising in the above case is as to whether a notice seeking commencement of arbitration, issued on 02.06.2022, could set in motion the process of resolution of a dispute regarding a work completed as early as on 30.07.2000. The High Court dealing with the application under Section 11 found from the agreement that there is an ambiguity in Clause 7 which requires the final bill to be submitted by the contractor within one month from the date fixed for completion of work *dehors* which the Engineer-in-Charge is competent to issue a certificate of measurement and the total amount payable for the work, which shall be final and binding on all parties. Since no such certificate was issued by the Engineer concerned and the communication of 04.01.2001 produced as Annexure P9, speaks only of a part payment, the dispute would not be beyond the scope of Section 11 of the Arbitration and Conciliation Act, 1996¹. The objection as to limitation was found to be effaced insofar as the final measurement with the total amounts payable having not been determined by the Engineer-in-Charge.
2. Sri Kunal Chatterji, learned counsel appearing for the State, the appellant, would rely on ***Vishram Varu and Company v. Union of India***². While Sri Sudhanshu Choudhari, learned Senior Counsel appearing for the respondent relied on ***Arif Azim Company Limited v. Aptech Limited***³ and ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another***⁴.
3. ***Vishram Varu and Company***² was a case in which the work undertaken was completed in the year 1985-86 when the claim for money accrued. Correspondences were initiated from the year 2012 under the RTI Act and eventually a legal notice seeking arbitration was issued on 22.10.2018. It was held that since the claim arose in the year 1985-86, the mere issuance of a notice in 2018 cannot

1 For brevity, '1996 Act'

2 (2023) 12 SCC 588

3 (2024) 5 SCC 313

4 (2025) 1 SCC 502

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enable the party to contend that the cause of action arose in the year 2018, after expiry of 32 years.

4. **Arif Azim Company Limited³** considered both the question of limitation with respect to the claim for recovery of money and the limitation provided for filing an application under Section 11(6). It was categorically found after referring to a host of precedents of this Court that the Limitation Act, 1963 is applicable to arbitration proceedings in general and Article 137 of that Act applies to a petition under Section 11(6) of the 1996 Act in particular. Insofar as the substantive claim in that case was concerned, it was found that the right to bring a claim arose on 28.03.2018, the claim being one of recovery of money. The period of limitation of three years ended on 27.03.2021; within the period in which limitation was suspended by this Court by reason only of the Covid-19 pandemic. The limitation having commenced from 01.03.2022 again as per the orders of this Court, the balance period available from the date of suspension, extended the expiry of limitation to 13.03.2023. The notice seeking arbitration under Section 21 was issued on 24.11.2022, bringing the initiation of the proceeding within the limitation of three years. Insofar as the limitation for making an application under Section 11(6), this Court found applicable Article 137, which also provides for a period of three years, the commencement of which was on expiry of 30 days from the date of receipt of the notice for initiation of arbitration. Notice issued on 24.11.2022 was delivered on 29.11.2022, thus, the limitation having commenced from 28.12.2022. The application under Section 11(6) was filed on 19.04.2023 within the period of three years from the expiry of 30 days from the receipt of notice. Thus, both the claim and the application under Section 11(6) were found to be within the limitation period, which in the present case is not satisfied insofar as the claim is concerned. We extract paragraph 68 from the aforesaid decision :

“68. Although, limitation is an admissibility issue, yet it is the duty of the Courts to prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process.”

5. **Aslam Ismail Khan Deshmukh⁴**, was a case in which the question arose as to whether the claim was barred by limitation, while the

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application for appointment of an Arbitrator under Section 11(6) though moved before a wrong forum, the High Court, was within the limitation period of 3 years as found in **Arif Azim**³. **Arif Azim**³ was found to have been concerned with two issues. First whether Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) and whether the Court may decline reference under Section 11 if the claims are ex-facie and hopelessly time barred. This Court noticing **Vidya Drolia and Ors v. Durga Trading Corporation**⁵, and **Bharat Sanchar Nigan Limited and Anr. v. Nortel Networks India Private Limited**⁶ held that period of limitation for filing a petition seeking appointment of an Arbitrator cannot be confused or conflated with the period of limitation applicable to substantive claims made in the underlying contract. In **BSNL**⁶, the notice invoking arbitration having been issued five and a half years after the cause of action arose i.e. rejection of claims of Nortel by BSNL, the claim itself was held to be ex-facie time barred. However, noticing the decision in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re.**⁷, it was held that in a scenario where the Referral Court is able to deal with the frivolity of 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. It was held that the Referral Court cannot indulge in any intricate evidentiary inquiry into the question whether the claims raised by the petitioner are time barred which determination has to be left to the decision of the Arbitrator. In the case of **Arif Azim**³, the question of limitation was to be considered on the basis of the facts disclosed, whether the period commenced from; the date of the letter forming the basis of the claim, the date of resignation of the petitioner or the date of subsequent legal notice sent by the respondent to the petitioner, which was left to be considered by the Arbitrator. However, in the present case there is no intricate evidentiary inquiry to be done. After Annexure P9 of 04.01.2001, whether it be the interim determination of dues or not, the appellant slept over its claim for 21 years before the notice seeking arbitration was issued on 02.06.2022; an *ex-facie* dead claim.

5 (2021) 2 SCC 1

6 (2021) 5 SCC 738

7 (2024) 6 SCC 1

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6. Arbitration though is an alternate dispute resolution system, which has to be encouraged, it cannot deviate from the fundamental principle that law favours the diligent and not the indolent. Section 42 of the Arbitration and Conciliation Act, 1996 applies the Limitation Act, 1963 to arbitrations as it is applied to proceedings in Court. Hence, for recovery of amounts, as in this case, the limitation is three years as provided in Article 18 of the Limitation Act, 1963. The commencement of arbitration proceedings as per sub-section (2) of Section 43 being the date referred in Section 21, which is the date on which a request for initiation of arbitration is received by the respondent, the claim itself was hopelessly time barred, the notice having been issued after 21 years.
7. In the present case, despite the work having concluded on 30.07.2000, the petitioner did not attempt to raise a bill or initiate the arbitration proceedings till 2022, when a notice requiring commencement of arbitration proceedings was first issued. The High Court erred insofar as finding failure on the part of the Engineer-in-Charge to determine the final amount payable, having extended the limitation. If there was such a failure on the part of the Engineer-in-Charge, it was for the contractor to have initiated arbitration then and there. Neither was notice issued for arbitration nor was a final bill raised or a request made to determine the total amount payable.
8. We find absolutely no reason to sustain the order initiating arbitration. We set aside the same and allow the appeal.
9. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.