

PLAGIARISM SCAN REPORT

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The situation described involves a dispute arising from a contract, where the petitioner is seeking resolution through arbitration as specified in the contract's clauses.

The contract includes a specific arbitration clause (Clause 15.0) that refers to Clauses 63 and 64 of the General Conditions of Contract (GCC) for the arbitration and settlement of disputes. This establishes the contractual foundation for the petitioner's request for arbitration.

The petitioner completed the contract work in June 2017. Despite the completion, the security deposit and Price Variation Clause (PVC) bill have not been released by the respondents (likely the employer or client). This indicates a breach of the contractual terms by the respondents, who are obligated to release these payments upon satisfactory completion of work.

The petitioner has made efforts to resolve the issue by submitting letters to the respondents, including one dated 11.05.2021, requesting the release of the security deposit and PVC bill. This indicates that the petitioner tried to address the issue amicably before resorting to arbitration.

As the respondents did not act on the request for payment, the petitioner submitted another letter on 28.01.2023, invoking the arbitration clause and requesting the appointment of an arbitrator. This step follows the contractually agreed-upon method for dispute resolution.

There is a specific disagreement regarding the final bill. The final bill was signed by the Deputy Chief Engineer/Con/SPTR on 19.11.2018, but the petitioner does not agree with the amount finalized. This disagreement over the final bill is a core issue that the petitioner wants to be resolved through arbitration.

ISSUES RAISED

Whether the claim for arbitration under Section

11(6) of the Arbitration Act is barred by limitation ?

ARGUMENTS ADVANCED BY THE PETITIONER

According to Clause 15.0 of the contract agreement, disputes should be governed by Clauses 63 and 64 of the General Conditions of Contract (GCC), which provide for arbitration.

The petitioner completed the contract work in all respects by June 2017.

Despite completing the work, the respondents have not released the security deposit and PVC bill. The petitioner has submitted letters requesting the release of these payments, specifically a letter dated 11.05.2021.

Since the respondents did not act on the payment request, the petitioner submitted another letter on 28.01.2023, invoking the arbitration clause and requesting the appointment of an arbitrator.

The final bill for the contract work was signed by the Deputy Chief Engineer/Con/SPTR on 19.11.2018. However, the petitioner does not agree with the final bill amount.

As the respondents have not acted on the arbitration clause, the petitioner is seeking the court's intervention to appoint an arbitrator to resolve the dispute.

ARGUMENTS ADVANCED BY THE RESPONDENT

The respondents argue that the present application under Section 11(6) of the Arbitration Act is time-barred based on the provisions of Section 21 and Sections 43(1) & 43(2) of the Arbitration Act. This suggests that the respondents believe the petitioner has exceeded the statutory time limits for initiating arbitration.

The respondents cite the judgment of the Supreme Court in the case of B and T AG vs. Ministry of Defence, 2023 SCC OnLine SC 657, to support their contention that the Arbitration Petition should be dismissed. They argue that this precedent demonstrates the application is time-barred and thus should not proceed.

These arguments are essentially procedural defenses aimed at dismissing the arbitration petition on the grounds of untimeliness, thereby preventing the dispute from being arbitrated.

JUDGEMENT ANALYSIS

According to Section 21 of the Arbitration Act, arbitral proceedings for a specific dispute commence on the date the respondent receives a request for arbitration, unless otherwise agreed by the parties. In this case, the letters from the petitioner dated 11.05.2021, 14.01.2022, 23.08.2022, and 28.01.2023 indicate that the contract work was completed in June 2017. The petitioner mentioned in a letter dated 14.01.2022 that the final bill was signed by the Deputy Chief Engineer/Con/SPTR on 19.11.2018. However, the petitioner only requested the appointment of an arbitrator on 28.01.2023, which is more than three years after the contract's completion and the final bill signing.

Even if the letter dated 23.08.2022, which mentions, "It is a notice as per Clause 63 of the agreement," is considered as the start of arbitration proceedings, it was still issued more than three years after the contract's completion and the final bill signing. Furthermore, Section 21 of the Arbitration Act states that the limitation period should be counted from when the request for arbitration is received by the other party, not from the date the request is issued.

Given that more than three years have passed since the petitioner acquired the right to seek arbitration for the

payment of the PVC bill and the release of the security deposit, which was signed by the Deputy Chief Engineer on 19.11.2018, the current claim for arbitration under Section 11(6) of the Arbitration Act is barred by the statute of limitations.

Therefore, the Arbitration Petition is dismissed. However, the petitioner may pursue alternative legal remedies to address their grievance

MATCHED SOURCES:

[Arbitration Brief Case – March 2024](https://www.sarthaklaw.com/arbitration-brief-case-march-2024....)

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