

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.20 of 2025
Reserved on: 24.07.2026
Pronounced on: 07.08.2026
Uploaded on: 10.08.2026

HPSEBL

.....Petitioner

Versus

M/s Hi-Tech Power System and another

.....Respondents

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
Whether approved for reporting? Yes.

For the petitioner:	Ms. Sunita Sharma, Senior Advocate with Ms. Hiaa Sharma and Ms. Harshita Dogra, Advocates.
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For the respondents:	Mr. H.S. Bhogal, Senior Advocate with Mr. Satish Sharma and Ms. Srishti Verma, Advocates.
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G.S. Sandhawalia, Chief Justice.

The present petition has been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') by the petitioner-Board for appointment of an Arbitrator. The dispute arose from the "Letter of Award for Supply of Material for providing and execution of augmentation of Conductor (Existing ACSR 6/1/4.72mm to 37/2.49mm) of 33KV Line from Girinagar to Nahan on Turnkey basis in Operation Circle, HPSEBL." The said contract was stated to be awarded to the respondents by the

Superintending Engineer, Operation Circle, HPSEBL, Nahan, vide Purchase Order No. OCN/DB-27/2009-11286-91 dated 07.01.2011 **(Annexure P-2)** for a sum of Rs. 1,15,56,704/-. Pursuant to clause 12.1 of the Contract, the stipulated time for completing the work was three months from the date of the award.

2. Similarly, "Letter of Award" for 'Survey, Design, Erection, Testing, and Commissioning for the Augmentation of Conductor (Existing ACSR 6/1/4.72mm to 37/2.49mm) of the 33kV Line from Girinagar to Nahan under Electrical Sub-Division No.-II, Nahan on a Turnkey basis in Operation Circle, HPSEBL, Nahan (Erection Part), amounting to Rs. 19,91,739/-, was also awarded to the respondent by the Superintending Engineer, Operation Circle, HPSEBL, vide Award Letter No. OCN/DB-27/2009-11292-97 dated 07.01.2011 **(Annexure P-2)**. Pursuant to clause 7.1 of the Contract, the stipulated time for completing the work was three months from the date of the award.

3. The petitioner-Board stated that the material was supplied to the respondents, who were asked to complete the work vide a letter dated 17.08.2015. However, the work was not completed even after a lapse of five years. Consequently, a final notice dated 11.02.2016, was served by the Superintending Engineer, Operation Circle, HPSEBL, Nahan. A meeting was

allegedly held with the Contractor/Firm on 02.03.2016, wherein the respondents had ensured to start the work after 15.04.2016, following the wheat harvest season. Eventually, the work was stated to have been rescinded on 06.04.2018. Prior to this, the respondent was informed that the work would be measured, and the results of the measurement would be final and binding and because the respondent did not join the measurement process, the petitioner-Board measured the work by forming a Joint Inspection Committee vide a letter dated 31.03.2018. According to the joint measurement report, the respondent had completed re-conductoring on only 4.664 km out of the 22.5 km across four patches between Do-Sarka and Girinagar. Furthermore, the firm failed to return any unused material or dismantled conductors.

4. Resultantly, a fallback was made on clause 4.1 of the Contract Agreement, titled 'Settlement of Disputes,' which provides an arbitration clause and is appended as **Annexure P-3**. It was specifically agreed between the parties that all differences or disputes arising out of or touching upon the subject matter of the Agreement shall be decided by the process of settlement and arbitration as specified in clause 29 of the General Conditions of Contract, in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

5. On 09.06.2023 (**Annexure P-4**), a notice was issued for referring the matter to an independent arbitrator in terms of the said clause. This notice mentioned an amount of Rs.1,15,56,704/- (supply part only) and Rs.19,91,379/- (erection part only), along with the award in question, and claimed Rs.96,66,354/- with a reference to the alleged notice dated 29.01.2023.

6. In pursuance to clause 25.1 of the work order and clause 4.1 of the Contract Agreement dated 07.01.2011 containing the arbitration clause, a second notice was sent on 14.08.2024 (**Annexure P-5**) for settlement of the dispute. In this notice, a sum of Rs.96,66,354/- was stated to be recoverable from the respondents as per the work award dated 07.01.2011 (**Annexure P-2**). Furthermore, the Chief Engineer (Project)-cum-Arbitrator, Vidyut Bhawan, Shimla, was nominated as the arbitrator, and the respondents' consent was sought accordingly. Thereafter, the petition came to be filed on 23.12.2024.

7. The reply was filed by the respondent, who asserted that the claim preferred by the petitioner is a dead claim and was not liable to be referred to arbitration. The answering respondents had failed to execute the work after 24.03.2012, thus, the cause of action, if any, arose to the petitioner on 24.03.2012. The present petition, having been filed in November 2024, was hopelessly time-

barred, and the first notice invoking arbitration, alleged to have been issued on 09.06.2023, was ex-facie beyond the period of limitation. Furthermore, the respondents denied being privy to any minutes of the meeting allegedly held on 02.03.2016, whereby they had supposedly undertaken to complete the work, and they also denied receiving the letter dated 29.01.2018, by which a final show-cause notice was allegedly served upon them. However, the letter rescinding the work was also stated not to be received by the respondents. In such circumstances, it has been held out that of clause 19 of the Contract was not enforceable under the law existing as of this date, which dictates that a party to a Contract is not eligible to unilaterally nominate an arbitrator.

8. The petitioner has filed a replication to the reply submitted by the respondents, referencing correspondences dated 06.08.2013 and 17.08.2015, which have not yet been placed on record. The petitioner had been served a notice invoking arbitration on 09.06.2023, but the respondents failed to concur with the appointment of an arbitrator and the three-year limitation period prescribed under Article 137 of the Limitation Act, 1963, commenced from the date of such failure. Since the present petition was filed in November 2024, it was well within the prescribed limitation period. An averment was made in the replication that the work had

commenced after the meeting held on 02.03.2016 and therefore, limitation does not stand in the way. Furthermore, the question of limitation, being a mixed question of fact and law, ought to be adjudicated by the Arbitral Tribunal upon the appreciation of evidence led by the parties. On the merits, it was averred that the respondents reportedly completed only 4.664 km of the total 22.5 km of work. The remaining material, worth crores of rupees, was neither utilized for the project nor returned to the petitioner. Additionally, the dismantled conductor was misappropriated by the respondents, establishing their liability to pay an amount of Rs.1,04,50,112/- to the petitioner.

9. Counsel for the petitioner-Board has placed reliance upon the judgments passed by the Apex Court in ***Vidya Drolia and Others Vs. Durga Trading Corporation (2021) 2 SCC 1*** and ***SBI General Insurance Company Limited v. Krish Spinning (2024) 12 SCC 1***, and contends that the order passed in the *suo motu* writ petition extending the COVID-19 limitation period by the Apex Court would be applicable and the period from 15.03.2020 till 28.02.2022 should be excluded for the purposes of prescribed limitation.

10. Reliance was also placed upon the judgment passed by the Apex Court in ***Aditya Khaitan Vs. IL and FS Financial Services Limited in Civil Appeal Nos.6411-6488 of 2023 (2023)***

INSC 867, wherein the Apex Court as such had allowed the appeals permitted the written statements to be taken on record after excluding the COVID period.

11. Counsel for the respondents, on the other hand, has submitted that no such averments were made in the petition and argued that this contention should not be accepted, as the petitioner must first establish what steps were taken after the Contract was rescinded. Notably, an intervening period of over two years elapsed after 06.04.2018, before the Apex Court had passed its order on 10.01.2022. Even after that order, no action was taken for nearly a year until the alleged show-cause notice was issued on 29.01.2023, which has also not been appended to the petition. Furthermore, it is submitted that the only document on record is the first notice dated 09.06.2023, which itself fails to mention that the petitioner was prevented from availing of remedies in accordance with the law.

12. Counsel for the respondents has placed reliance upon the judgment of the three-judge Bench of the Apex Court in ***Elfit Arabia and Another Vs. Concept Hotel Barons Limited and Others* (2024) SCC OnLine SC 1739**, wherein it was held that the Court must 'cut the deadwood' by refraining from appointing an arbitrator when claims are *ex facie* time-barred and dead, or where no subsisting dispute exists. It is submitted that in the said case, the

notices invoking arbitration dated 04.07.2022 and 27.10.2022 were issued eleven years after the cause of action originally arose in 2011. Consequently, the claims are well beyond the prescribed limitation period of three years. It is further submitted that the principles established in **Vidya Drolia's** case (*supra*) were duly considered and followed by the Apex Court in the aforementioned judgment.

13. Reliance was also placed upon the judgment passed by the undersigned on 03.07.2026 in **Arb. Case No. 167 of 2025**, titled as **Shashi Sharma Vs. The State of Himachal Pradesh and Others**. In that case, notice was issued five and a half years after the cause of action arose, long after the dispute had died, as the contractor had done nothing for eight years. It was held therein that merely serving a notice on 22.03.2024 to claim an outstanding amount or raise a bill would not give a fresh cause of action to the petitioner.

14. The above pleaded facts would go on to show that apparently after the issuance of the work Award on 07.01.2011 and the alleged rescinding on 06.04.2018, there was total inactivity on the part of the petitioner-Board. No notice has been placed on record to provide material evidence of any meeting or for the resumption of work. This is despite the petitioner's averment that a consensus was

reached for the respondent to restart the work in April 2016, pursuant to an alleged meeting held on 02.03.2016, in the chamber of the Superintending Engineer, Operation Circle, HPSEBL, Nahan. Notably, nothing has been placed on record to show that the minutes of any such meeting were signed by the respondents. Furthermore, the notice dated 28.03.2013, allegedly issued in compliance with the minutes of that meeting, has also not been produced. It is thus apparent that while the dispute had been festering since 2016, the contract was only rescinded on 06.04.2018. Ultimately, no efforts were made by the petitioner-Board for referring the matter to arbitration or to serve the necessary notice for the appointment of an arbitrator.

15. The first notice having been served on 09.06.2023, is far beyond the applicable limitation period. This period is to be calculated from the apparent abandonment of the work on 17.08.2015. Indeed, the Petitioner's own case is that the Superintending Engineer had asked them by holding a meeting and had issued a letter demanding the immediate completion of the work on 02.03.2016. Thus, it is apparent that despite awarding the Contract in 2011 for a six-year period, the work remained incomplete, which was to be completed in a period of three (3) months. The petitioner-Board took no active steps to raise a dispute

or enforce a settlement through the appointment of an Arbitrator. Merely delaying the rescinding of the Contract until 06.04.2018 does not extend a period of limitation that had already long expired.

16. The legal notice thus served on 09.06.2023 (**Annexure P-4**), claiming the amount of Rs.96,66,354/- for the first time, at this stage, would not as such extend the period of limitation. The argument raised that the limitation period should be counted from 06.04.2018, is also without any basis under the peculiar facts and circumstances of the case. Furthermore, the benefit of an extension on account of the intervening COVID-19 period would not be applicable to the present petitioner-Board. This is because the initial order extending the limitation period took effect on 15.03.2020, by which time the three-year limitation period had already been expired and no active steps could have been taken. As noticed above, the alleged promise to restart the work was made after 15.04.2016, and therefore, falling back on the judgment passed by the Apex Court would not help the petitioner-Board.

17. In **Vidya Drolis** case (*supra*), it has been held that the Court, at the referral stage, can interfere only when it is manifested that the claims are *ex facie* time-barred and dead, or there is no subsisting dispute, and all other cases should be referred to the Arbitral Tribunal for a decision on merits. The restricted and limited

review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood.

18. The said view has been consistently followed in the judgments passed by the Apex Court in ***Bharat Sanchar Nigam Limited and Another Vs. M/s. Nortel Networks India Private Limited (2021) 5 SCC 798*** and also in ***Civil Appeal No. 4320 of 2026***, titled as ***State of West Bengal and Others Vs. M/s. B.B.M. Enterprises***, dated 09.04.2026, wherein the order of the High Court which had restored a dead dispute after a period of twenty years, was set-aside.

19. In such circumstances, the judgment passed by the Apex Court in ***Aditya Khaitan's case (supra)*** is not applicable as such, wherein it has been held that in the commercial suit, the 30-days period for filing a written statement had expired on 08.03.2020, and it was noticed that on 06.06.2020, the further condonable period of 90 days also expired. In these circumstances, the appeal had been allowed while extending the limitation period on account of the orders passed earlier by the Apex Court. The said judgment thus would not be of any help to the petitioner-Board, in view of the discussions made above.

20. Resultantly, the present petition is dismissed on account of the total inaction and negligence on the part of the petitioner-Board. No effective steps were taken to serve even the basic notice required to initiate the arbitration proceedings at the earliest. The petitioner-Board thus cannot take advantage of its own inaction. Furthermore, this Court lacks jurisdiction to appoint an Arbitrator or to seek recovery of an amount that has long been barred by limitation.

21. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

7th August, 2026
(Munish Thakur)