2026:HHC:46253

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**Arb. Case No. 70 of 2026 a/w Arb Case Nos. 74, 75, 77 & 80 of 2026**

**Date of Decision*: 09.10.2026***

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M/s Lakshya Construction .....*Petitioner(s)*

*Versus*

*The Chief Engineer (SZ) HP PWD, Shimla & others*

..*Respondents*

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*Coram:*

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.**

*Whether approved for reporting?*

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For the Petitioner(s): Mr. Shiv Bhatt, Ms. Kumkum Bhatt & Mr. Hemant Thakur, Advocates.

For the Respondents: Mr. Arsh Rattan, Deputy Advocate General.

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***G.S. Sandhawalia, Chief Justice***

The present order shall dispose of six petitions filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for the appointment of an Arbitrator. Since

the disputes revolve around common facts, the matters are being decided together.

2. Since the claims are patently time-barred and the notices under Section 21 of the Act were served after three years of the breaking point as such, this Court is of the considered opinion that these petitions cannot be allowed and are liable to be dismissed on the ground of being stale and deadwood claims. The factual matrix of the six cases is set out below, followed by detailed reasoning for the dismissal of the said petitions.

**Arb. Case No. 70 of 2026**

3. This petition pertains to the Agreement executed between the parties on 16.05.2019 (Annexure P-2) for the execution of the work relating to Metaling and Tarring of Bhuli to Tung Road Km.0/000 To 12/300(L-135) Stage-II under PMGSY (World Bank RRP-II) Batch-1,2018-19 District Mandi (H.P) (Sub Construction of retaining Walls, Breast Walls, Metaling and tarring, Cross- drainage work 7, road side drain, parapets, providing road sign board,

Km stone and 200 mtr. Stone, Bio Engineering works and Five-year routine maintenance in Km. 0/0 to 12/300 Package No HP 08-488.

4. As per the pleadings, the Letter of Acceptance was issued on 16.05.2019 and the work was to commence on 11.06.2019. The petitioner-contractor had completed almost 40% of the work and repeatedly requested for release of the outstanding payments in terms of the Agreement dated 16.05.2019 (Annexure P-1) However, the same was not released by the respondents. Resultantly, the petitioner-contractor had stopped the work on 31.05.2021.

5. It is further pleaded that the respondents had assessed the total value of the work executed by the petitioner-contractor at Rs.1,62,67,037/-, but disbursed only Rs.1,06,16,312/-. Resultantly, reminders/letters dated 31.10.2019, 19.01,2021, 24.01.2021 and 04.03.2021 (Annexure P-3 to P-6) were served upon the respondents for making the payment, but neither the same were replied to nor

any payment was made. It is averred that a hindrance-free site, requisite forest clearance ensuring approach road connectivity, the approved site plan and other essential documents were not provided for the execution of the work. Furthermore, withholding of payments further constituted a violation of the provisions of Section 73 & 74 of the Indian Contract Act, 1972.

6. It is further pleaded that the termination of the contract vide letter dated 31.05.2021 (Annexure P-7), is bad in law and liable to be quashed. It has also been submitted that an unlawful penalty under the guise of liquidated damages was imposed and the Bank Guarantee amounting to Rs.23,43,000/- was wrongfully invoked. A perusal of the said Annexure P-7 would go on to show that liquidated damages were levied under Clause 44 of the General Conditions of Contract (GCC) on the ground that the work had not been completed. On account of the delay in payment, the account of the petitioner had been declared a Non-Performing Asset

(NPA) on 26.07.2022. Resultantly, the bank concerned had initiated proceedings against the petitioner under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), severally affecting the petitioner's mental health. The petitioner had contacted Ms. Himani Bohra and Mr. Rajendra Singh Azad, Advocates, High Court of Uttarakhand, Nainital, to initiate legal action against the respondents, however no action was taken due to non-payment of legal fees. Copies of the letters exchanged between the petitioner and the said Advocates, dated 13.03.2022, are collectively placed on record as Annexure P-10. Resultantly, the petitioner sent a notice dated 25.04.2025 (Annexure P-11), wherein demands were made for release of the outstanding payments.

7. Thereafter, the petitioner approached the the Governor of Himachal Pradesh vide letter dated 25.04.2025 (Annexure P-12) highlighting the inaction and non-payment by the respondents, which was

forwarded to the respondents on 14.05.2025 (Annexure P-13) to take appropriate action. Resultantly, the petitioner-contractor sent a legal notice dated 14.07.2025 (Annexure P-15) under Section 21 of the Act to the respondents, invoking arbitration proceedings as such and seeking the appointment of an Arbitrator.

8. Thereafter, the petitioner filed this petition before this Court on 17.12.2025, which is accompanied by an application under Section 5 of the Limitation Act read with Section 43(3) of the Act, for condoning the delay in filing the present petition. A claim has also been made that the period during the COVID-19 pandemic i.e. from March 15, 2020 to February 28, 2022 be excluded for the purpose of condoning the delay in filing the application. In such circumstances, an amount of Rs.1,20,00,000/-(rupees one crore twenty lacs only) has been claimed to be payable to the petitioner towards retention money and for the value of work executed.

9. The State, in its response, has submitted that the petitioner has failed to comply with the pre-arbitral dispute resolution mechanism, as the remedy provided under Clause 24 of the work agreement executed between the parties was not resorted to and it was a stale and dead claim. Reliance has been placed upon the judgment of the Apex Court in ***Bharat Sanchar Nigam Limited and Another Vs. M/s. Nortel Networks India Private Limited (2021) 5 SCC 798,*** to contend that the claims are barred by a period of more than three years. It is further averred that the petitioner-contractor had executed work only to the extent of approximately 30% and that payments amounting to Rs.1,45,24,138/- up to 05.03.2021 were duly released against the work actually executed. Resultantly, the liquidated damages @ 5% amounting to Rs.26,86,761/- were rightly imposed upon the petitioner-contractor vide letter dated 07.01.2020 (Annexure R-II). Due to the extremely slow progress, a second penalty of liquidated

damages at the rate 10% of the awarded amount, was imposed vide office order dated 23.05.2020 (Annexure R-III). The termination of the contract, which had been done on 31.05.2021 vide Annexure R-V, is legal, valid and justified and the State has rightly denied payment of any additional amount. It is further averred that merely submitting a representation to the Governor as such does not confer any legal right upon the petitioner, nor does the mere forwarding of such representation by the Governor's office create any cause of action or extend limitation.

**Arb. Case No. 74 of 2026**

10. The agreement in question was entered into between the parties on 15.05.2019 (Annexure P-2) for the work relating to Construction of Thela Jesta Parli (Phase-II) Chhaniage to Sees Road Km. 0/0 to 7/750 Under PMGSY (World Bank RRP-II) for the year 2018-19 Batch I stage-I, (SH: Formation, Cutting, retaining wall, Breast wall) wire create for dumping unlined drain, V-shape drain PCC parapet Hume pipe

culvert RCC Slab Culvert Package No. HP-06-142 Distt Kullu (HP).

11. The work was allegedly commenced on 27.06.2019, after issuance of the Letter of Acceptance on 27.06.2019. Despite nearly 60% of the work being completed, the respondents failed to release payments for the executed work. Consequently, the petitioner-contractor was compelled to halt the work on 14.09.2021.

12. It is further pleaded that out of total dues of ₹1,35,00,000/-, the petitioner-contractor received only ₹74,90,074/-. Thereafter, several reminders/ letters dated 15.07.2021, 20.03.2021, 08.06.2021, 30.06.2021, 15.01.2020, and 15.07.2021 (Annexures P-3 to P-8) were served upon the respondents demanding payment. However, the respondents neither responded to these communications nor released any outstanding payment. The pleadings, in sum and substance, are identical to those in Arbitration Case No. 70 of 2026, except regarding the termination of the contract on 14.09.2021 (Annxure

P-9). It is alleged that the respondents are liable to pay Rs.1,50,00,000/- towards retention money and they imposed an unlawful penalty under the guise of liquidated damages and wrongfully invoked a bank guarantee amounting to Rs.25,10,000/-. The factual position is similar, inasmuch as the Advocates, who were contacted, failed to issue the requisite notices on account of lack of payment of legal fees. Resultantly, a representation was submitted to the Governor seeking release of the due amount, which was thereafter forwarded to the Chief Secretary, Government of Himachal Pradesh. Therafter, a notice dated 14.07.2025 (Annexure P-17) was served upon the respondents seeking appointment of an Arbitrator. Further, an application under Section 5 of the Limitation Act, 1963 read with Section 43(3) of the Arbitration and Conciliation Act, 1996 has been filed for condonation of delay in filing the present petition, on the grounds identical to those pleaded in Arbitration Case No. 70 of 2026.

13. The respondent-State opposed the petition on identical grounds by filing a reply, contending that the claim is barred by limitation. It was submitted that the work executed by the petitioner was valued at Rs.1,35,79,553/-, approximately 38% of the awarded amount. Out of this amount, a payment of Rs.84,65,945/- was made to the petitioner after making statutory deductions. Since, the work was scheduled to be completed by 30.11.2020, but remained incomplete, liquidated damages to the tune of Rs.33,16,334/- were imposed upon the petitioner-contractor for the inordinate delay in the execution of the work vide letter dated 31.03.2020. A Contractor Management Meeting was initially scheduled for 24.05.2021, and subsequently re-scheduled on 07.06.2021 under the Chairmanship of the Superintending Engineer. However, the petitioner failed to attend the meetings. Subsequently, during the Contractor Management Meeting held on 19.07.2021, through video conferencing, the petitioner assured that the work

would be completed by 31.12.2021. But as the work remained incomplete, the contract was terminated on 24.09.2021 (Annexure R-6). A perusal of the same would go on to show that the progress of the work was slow and the pace of the work had not been maintained and, therefore, the liquidated damages were firstly imposed on 31.03.2020 and noting that the contractor had removed his machinery, the Superintending Engineer had been requested to take action to terminate the contract. The record further would go on to show that apparently, thereafter, the notices were served upon the petitioner-contractor, who assured that the work would be completed by 31.12.2021. Resultantly, the contract was terminated on 14.09.2021, upon reaching a breaking point.

**Arb. Case No. 75 of 2026**

14. The parties entered into an Agreement on 15.05.2019 (Annexure P-2) for the work relating to construction of Barnagi to Chipni Road Km.0/0 to 8/0 Under PMGSY (World Bank RRP-II for the year 2018-19 Branch- I, state- I (SH:-Formation, cutting,

retaining walls, Breast wall) wire create for dumping unlined drain, PCC parapet Hume pipe culvert) Package No. HP-06-141 Distt Kullu (HP).

15. The work was started on 20.01.2020, pursuant to the Letter of Acceptance issued on 15.05.2019. Allegedly, despite nearly 35% of the work being completed, the respondents failed to release payments for the executed work. Resultantly, the petitioner-contractor was compelled to stop the work on 16.07.2021.

16. It is further pleaded that out of total dues of ₹53,38,454/-, the petitioner-contractor received only ₹40,34,430/-. Thereafter, several reminder letters dated 19.07.2021, 15.07.2021, 05.06.2021, 08.06.2021, 30.06.2021, and 15.07.2021 (Annexures P-3 to P-8) were sent to the respondents demanding payment. However, the respondents neither replied to these letters nor made any payment of the outstanding payment. In sum and substance, the pleadings are identical to those in Arbitration Case No. 70 of 2026, except regarding the termination of

the contract on 06.09.2021 (Annxure P-9). It is averred that the respondents are liable to pay Rs.60,00,000/- towards retention money besides having unlawfully imposed a penalty under the guise of liquidated damages and wrongfully invoked a bank guarantee amounting to Rs.14,37,000/-. The factual position is similar, in as much as the Advocates, who were contacted, failed to issue the requisite notices due to lack of payment of legal fees. Resultantly, a representation was submitted to the Governor seeking release of the due amount, which was thereafter forwarded to the Chief Secretary, Government of Himachal Pradesh. Thereafter, a notice dated 14.07.2025 (Annexure P-17) was issued to the respondents seeking appointment of an Arbitrator. Further, an application under Section 5 of the Limitation Act, 1963 read with Section 43(3) of the Arbitration and Conciliation Act, 1996 has been filed for condonation of delay in instituting the present petition, relying on grounds identical to those pleaded in Arbitration Case No. 70 of 2026.

17. The respondent-State opposed the petition on similar grounds by filing a reply, wherein it has been contended that the claim is time barred. It was pleaded that the work executed by the petitioner was valued at Rs.83,42,939/-, approximately 26.52% of the awarded amount. Out of this amount, a payment of Rs.40,34,433/- was made to the petitioner after making statutory deductions. Since, the work was scheduled to be completed by 31.12.2021, but remained incomplete, liquidated damages to the tune of Rs.26,12,287/- were imposed upon the petitioner-contractor for the delay in the execution of the work on 16.07.2021. A Contractor Management Meeting was initially scheduled for 24.05.2021, and subsequently, on the request of the contractor, it was re-scheduled for 07.06.2021 under the Chairmanship of the Superintending Engineer. However, the petitioner failed to attend the meetings. Subsequently, during the Contractor Management Meeting held on 19.07.2021, through video conferencing, the petitioner assured that the work

would be completed by 31.12.2021. But as the work remained incomplete, the contract was terminated on 21.09.2021 (Annexure R-6). A perusal of the same would go on to show that the progress of the work was slow and the pace of the work had not been maintained and, therefore, the liquidated damages were firstly imposed on 16.07.2021 and noting that the contractor had removed his machinery, the Superintending Engineer had been requested to take action to terminate the contract. The file further would go on to show that apparently, thereafter, the notices were served upon the petitioner-contractor, who assured that the work would be completed by 31.12.2021. Resultantly, the contract was terminated on 06.09.2021, upon reaching a breaking point.

**Arb. Case No. 77 of 2026**

18. The parties entered into an Agreement on 04.06.2019 (Annexure P-2) for the work relating to construction of Kharamukh Dhajji to Mindra Road Km. 0/000 to 5/500 (SH: Formation, Cutting, wire crates, Retaining Walls, Breast Walls, Cross Drainage, Side

Drains and parapet under PMGSY, (Batch-1,2018-19) Package No. HP-02-308.

19. The work was allegedly started on 12.06.2019, after the Letter of Acceptance was issued on 04.06.2019. Despite nearly 30% of the work being allegedly completed, the respondents failed to release payments for the executed work. Resultantly, the petitioner-contractor was compelled to stop the work on 18.08.2021.

20. It is further pleaded that out of total dues of ₹15,00,000/-, the petitioner-contractor received only a payment of ₹10,48,647/-. Thereafter, several reminders/letters dated 06.01.2020. 15.01.2020, 18.06.2020, 23.12.2020, 26.07.2020 and 01.08.2021 (Annexures P-3 to P-8) were sent to the respondents demanding payment. However, the respondents neither replied to these letters nor made any payment of the outstanding payment. In sum and substance, the pleadings are identical to those in Arbitration Case No. 70 of 2026, except regarding the termination of the contract on 18.08.2021 (Annexure

P-9). It is averred that the respondents are liable to pay Rs.1,15,00,000/- towards retention money besides having unlawfully imposed a penalty under the guise of liquidated damages and wrongfully invoked a bank guarantee amounting to Rs.20,50,000/-. The factual position is similar, in as much as the Advocates, who were contacted, failed to issue the requisite notices due to lack of payment of legal fees. Resultantly, a representation dated 07.05.2025 (Annexure P-14) was submitted to the Governor seeking release of the due amount, which was thereafter forwarded to the Chief Secretary, Government of Himachal Pradesh vide letter dated 14.05.2025 (Annexure P-15). Thereafter, a notice dated 14.07.2025 (Annexure P-17) was issued to the respondents seeking appointment of an Arbitrator. Further, an application under Section 5 of the Limitation Act, 1963 read with Section 43(3) of the Arbitration and Conciliation Act, 1996 has been filed for condonation of delay in instituting the present

petition, relying on grounds identical to those pleaded in Arbitration Case No. 70 of 2026.

21. The State opposed the petition on the identical grounds by filing reply and submitting that the claim is time-barred and that the work which had been executed, was valued at Rs. 15,17,411/-which had been paid to him. The work was to be completed in all respects by 28.12.2020, but remained incomplete. A Contractor Management Meeting was convened on 05.01.2021 (Annexure R-12), which the Contractor had attended through video conferencing and assured that the work would be completed by 30.06.2021. The contract was terminated on 18.08.2021 (Annexure R-15).

**Arb. Case No. 80 of 2026**

22. The contract in question was entered into between the parties on 15.05.2019 (Annexure P-2) for the work relating to up-gradation of Hurla (Baranallah) to Suchani Road Km.6/440 To 10/0 Under PMGSY (World Bank RRP-II for the year 2018-19 Batch-I Stage-II (SH:-Metaling and Tarring,

retaining wall Breast wall, cross drainage, PCC Drain, CC pavement, Imp of curve setting out Parapet and Routine maintenance) package No. HP-06-17 Distt Kullu (HP).

23. The work was alleged to have started on 25.06.2019, after issuance of the Letter of Acceptance on 15.05.2019. Almost 50% of the work had allegedly been done. The payment for the work executed was not released by the respondents. Resultantly, the petitioner-contractor had stopped the work on 04.09.2021.

24. It is further pleaded that the petitioner-contractor had only received a payment of Rs.36,93,376/- out of Rs.46,13,459/-. Resultantly, reminders/letters dated 15.07.2021, 30.06.2021 & 15.01.2020 (Annexure P-3 to P-5), respectively were served upon the respondents for making the payment, but neither the same were replied to nor any payment was made. The pleadings, in sum and substance, are identical to those in Arb Case No. 70 of 2026, except regarding the termination of the

contract on 04.09.2021 (Annxure P-6). It is averred that the respondents are liable to pay an amount of Rs.60,00,000/- towards retention money and they imposed an unlawful penalty under the guise of liquidated damages and wrongfully invoked a bank guarantee amounting to Rs.7,43,500/-. The factual averments in this regard are similar, in as much as the Advocates, who were contacted, failed to send the requisite notices on account of non-payment of legal fees. Resultantly, a representation was made to the Governor, for release of the amount, which was subsequently forwarded to the Chief Secretary to the Government of Himachal Pradesh. A notice had been sent to the respondents seeking appointment of an Arbitrator on 14.07.2025 (Annexure P14). An application under Section 5 of the Limitation Act read with Section 43(3) of the Act has also been filed for condonation of delay in filing the petition, on the same grounds as set out in Arbitration Case No. 70 of 2026.

25. The State opposed the petition on the identical grounds by filing reply and submitting that the claim is time-barred and that the work which had been executed, was of Rs 46,37,326/-, approximately 25.19% of the awarded amount. It is averred the payment of Rs.46,37,326/- was made to the petitioner for the actual work done, out of which, a sum of Rs.36,93,376/- was disbursed after making statutory deductions. Since, the work was to be completed in all respects by 03.07.2020, but remained incomplete, liquidated damages amounting to Rs.23,01,460/- were imposed upon the petitioner-contractor for the abnormal delay in the execution of the work on 06.01.2020 firstly. A Contractor Management Meeting was convened on 24.05.2021, and on the request of the contractor, the meeting was re-scheduled on 07.06.2021 under the Chairmanship of the Superintending Engineer, however, the petitioner failed to attend the meetings. Subsequently, during the Contractor Management Meeting held on 19.07.2021, through video

conferencing, the petitioner assured that the work would be completed by 31.12.2021. But as the work remained incomplete, the contract was terminated on 21.09.2021 (Annexure R-6). A perusal of the same would go on to show that the progress of the work was slow and the pace of the work had not been maintained and, therefore, the liquidated damages were first on 06.01.2020 and noting that the contractor had removed his machinery, the Superintending Engineer had been asked to take action to terminate the contract. The file further would go on to show that apparently, thereafter, the notices were served upon the petitioner-contractor, who assured completion of work by 31.12.2021 (Annexure R-18).

26. A perusal of the file would also go on to show that on 04.09.2021 (Annexure P-6), a direction was issued to take action to terminate the contract agreement under Clause 52 of the Agreement and recall the tender for the balance work. Apparently, before that, liquidated damages to the tune of Rs.

Rs.23,01,460/- were imposed on the contractor vide letter dated 06.01.2020 and it was noticed on 21.09.2021 that he had already removed his machinery. It is thus apparent that after the year 2021, the petitioner had made no effort as such to send the notice under Section 21 of the Act and only after 3½ years, a notice dated 14.07.2025 was sent seeking the appointment of an Arbitrator for the first time. Therefore, it can safely be held that the claim was barred by limitation.

27. No replications have been filed by the petitioners controverting the pleadings made by the petitioners. The period of three years had thus expired in the year 2024 after termination of contract on the undertaking given to complete by 31.12.2021 which was not adhered to and no notice under Section 21 of the Act had been sent untill then. It was only on 14.07.2025, that notices under Section 21 of the Act were served upon the respondents for the appointment of an independent and impartial sole Arbitrator.

28. The details of the termination of the contract, stoppage of work and date of issuance of the notice under Section 21 of the Act is given below:-

| Sr. No. | Case No. | Stoppage of work | Date of Termination of Contract | Date of Issuance of notice u/21 of the Act. |
|---|---|---|---|---|
| 1. | Arb. Case No. 70 of 2026 | 31.05.2021 | 31.05.2021 | 14.07.2025 |
| 2. | Arb. Case No. 74 of 2026 | 14.09.2021 | 14.09.2021 | 14.07.2025 |
| 3. | Arb. Case No. 75 of 2026 | 16.07.2021 | 06.09.2021 | 14.07.2025 |
| 5. | Arb.Case No.77 of 2026 | 18.08.2021 | 18.08.2021 | 14.07.2025 |
| 6. | Arb.Case No.80 of 2026 | 04.09.2021 | 04.09.2021 | 14.07.2025 |

**Reasons for Dismissal:**

29. It is in this background, the petitions are patently time-barred, as the cause of action arose in 2021 when the work had been stopped and bank

guarantee had been encashed and liquidated damages had been imposed and the contract was terminated and the petitions had been filed after an inordinate, unexplained delay only on 17.12.2025. Even assuming that the breaking point had been reached between the parties in the year 2021 when the contract was terminated, therefore, only a request was made for release of the pending payments and no effort was made to initiate proceedings under Section 21 of the Act. No notices had thus been served for the initiation of proceedings within the requisite period of three years, as prescribed by the Apex Court in the law laid down in ***Vidya Drolia and Others Vs. Durga Trading Corporation (2021) 2 SCC 1*** and ***Bharat Sanchar Nigam Limited and Another Vs. M/s. Nortel Networks India Private Limited (2021) 5 SCC 798.***

30. Further reliance can also be placed 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 to be noticed 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 were held well beyond the prescribed limitation period of three years. It is further to be noticed that the principles established in ***Vidya Drolia's*** case *(supra)* were duly considered and followed by the Apex Court in the aforementioned judgment. The relevant part of the ***Elfit Arabia's*** case (supra) reads as under:-

> *"5. The respondents contend that the claims of the petitioner are barred by limitation and urge this Court to dismiss the petition. Whether a claim is barred by limitation lies AP 15 of 2023 ordinarily within the domain of the arbitral tribunal. However, a court exercising jurisdiction under Section 11(6) of the Act may reject ex facie non-arbitrable or dead claims, to protect the other party from being*

> *drawn into a protracted arbitration process, 2 that is bound to eventually fail. The court must 'cut the deadwood' by refraining from appointing an arbitrator when claims are ex facie time-barred and dead, or there is no subsisting dispute.*
>
> *6. This examination does not involve a full review of contested facts but only a primary review, where uncontested facts speak for themselves. 4 Such limited scrutiny is necessary as it is the duty of the court to protect the parties from being compelled to arbitrate when the claim is demonstrably barred by limitation. If courts do not intervene within this limited compass and mechanically refer every dispute to arbitration, it may undermine the effectiveness of the arbitration process itself.*

31. Reliance can also be 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.

32 The said view has been followed in the judgment passed by the Apex Court in and also in ***Civil Appeal No. 4320 of 2026, titled as State of West Bengal and Others Vs. M/s. B.B.M. Enterprises***, decided 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.

33. In ***Arbitration Petition (C) No. 13 of 2023, titled as M/s B and T AG Vs. Ministry of Defence,*** decided on 18.05.2023, a similar issue concerning the appointment of Arbitrator arose before the Apex Court. The encashment of the warranty bond had taken place on 16.02.2016 and thereafter, the parties apparently remained in discussions. The petitioner requested the respondents to review the wrongful imposition of the 8 liquidated damages on 04.09.2019 and a notice of the arbitration was sent by the petitioner on 08.11.2021. The said notice was held to have been

sent after a period of more than five years, far beyond the limitation period of three years. Resultantly, it was held that the 'Breaking Point' should be treated as the date on which the cause of action arose for the purpose of limitation, which was the encashment of the bank guarantee. It was held that the entire history of the case has to be seen and whether a party has abandoned efforts at arriving at a settlement. It was was accordingly held that it is not open to a party to sit tight and not file an application for settlement of a dispute within the time prescribed by the Limitation Act and allow his right to be extinguished by the lapse of time and thereafter to assert a cause of action to file an application under Section 11 of the Act for establishment of his right, which is not alive. The relevant paragraphs of the said judgment read as under:-

> *"62. At the cost of repetition, we state that when the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the*

> *Government account that was the end of the matter. This "Breaking Point should be treated as the date at which the cause of action arose for the purpose of limitation. 63. Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the "cause of action" for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating."*

34. Keeping in view the above, this Court is of the considered opinion, that initiating the appointment of an Arbitrator would only burden the the interests of the State to defend the litigation in spite of inaction on the part of the petitioner-contractor.

35. It is also pertinent to mention that in **Arbitration Case Nos. 149, 151, 156 & 157 of 2025 & 76 of 2026,** all titled as ***Lakshya Construction Vs. State of Himachal Pradesh & others,*** filed by the same contractor, the matters

had been referred to arbitration, where it was found that there was still communication after the breaking point, and the notice under Section 21 of the Act had been served within three years. However, that is not so in the present cases. Resultantly, this Court has no option but to dismiss the petitions. Thus, the claims are not maintainable, being time-barred.

36. Accordingly, the petition is dismissed alongwith pending application(s), if any.

**(G.S. Sandhawalia)**
**Chief Justice.**

**October 09, 2026**
*(hemlata)*