2026:HHC:4588

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Arb. Case No. *78 of 2026*
Date of Decision*: 09.10.2026*

M/s Lakshya Construction

.....Petitioner(s)

Versus

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

..Respondents

Coram:

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

Whether approved for reporting?

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

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

G.S. Sandhawalia, Chief Justice

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for the appointment of an Arbitrator, by the petitioner-Contractor, who was awarded the work of construction of link road from Kando Dugana to

Samah Pamta Km. 0/000 to 5/870 (L-022) (SH: - Removel of Formation deficiencies, C/o R/wall & B/wall, cross drainage works, P/L M/T, C/O essential parapets, road side furniture and dumping site in Km 0/0 to 5/870 including routine maintenance for five years after completion under PMGSY Batch-I (2018-19)) Package No. HP-10-255 District Sirmor (HP).

2. The Letter of Acceptance was issued on 10.04.2019 and the work was to commence on 27.05.2019. As per the pleadings, the petitioner-Contractor had completed almost 40% of the work and repeatedly requested for release of payment in terms of the Agreement dated 27.05.2019 (Annexure P-2). However, the same was not released by the respondents. Resultantly, the work was stopped on 07.05.2022.

3. It is further pleaded that work to the tune of Rs.52,66,697.00 had been executed, but only Rs.28,49,203.00 were paid. Resultantly, letters dated 25.02.2020 (Annexure P-3) and 20.02.2020 (Annexure P-4) were served upon the respondents on

the ground that due to non-payment, the work had been slowed down and eventually came to a standstill. It has further been pleaded that a hindrance-free site, requisite forest clearance ensuring approach road connectivity, the approved site plan and other essential documents were not provided for execution of the work. Withholding payments further constituted a violation of the provisions of Section 73 & 74 of the Indian Contract Act, 1972.

4. A Termination Letter was issued on 09.05.2022 (Annexure P-5), which is sought to be challenged on the ground that the liability in question is liable to be set aside. It has also been pleaded that unlawful penalty under the guise of liquidated damages was imposed and the Bank Guarantee amounting to Rs.21,04,000/- was wrongfully invoked.

5. A perusal of the said Annexure P-5 would go on to show that action under Clause 44 of the GCC was taken against the Contractor and liquidated damages amounting to Rs.13,79,899/- only was

imposed upon the Contractor on 01.01.2020 and that the work has not been carried out. Resultantly, the termination of the Agreement as such had been done. Various facts were pleaded that the petitioner has become bankrupt and all the overdraft facilities availed by the petitioner were declared Non-Performing Asset (NPA) on 26.07.2022. The bank concerned has 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.

6. Copies of medical prescriptions and test reports from 25.09.2020 to date, are collectively annexed as Annexure P-7.

7. On 10.07.2021, the petitioner-Contractor had written to Himani Bohra, Advocate, High Court of Uttarakhand, Nainital, for taking legal action against the respondents, however no action was taken by the said Advocate due to non-payment of fees by the petitioner. Thereafter, the petitioner contacted

another Advocate, Sh. Rajendra Singh Azad, High Court of Uttarakhand, Nainital, to take legal action against the respondents, but he had also not taken any action due to non-payment of fees. Copies of letters exchanged between the petitioner and the Advocates, dated 13.03.2022, are collectively placed on record as Annexure P-8. Resultantly, the petitioner sent a notice dated 07.05.2025 (Annexure P-9) for release of pending payments to the respondents.

8. Thereafter, the petitioner sent a letter dated 07.05.2025 (Annexure P-10) to the Governor of Himachal Pradesh regarding inaction and non-payment by the respondents, which was forwarded to the respondents on 14.05.2025 (Annexure P-11) to take appropriate action. Resultantly, the petitioner-Contractor sent a legal notice dated 14.07.2025 (Annexure P-13) to the respondents invoking arbitration proceedings as such and seeking the appointment of an Arbitrator by serving a formal notice under Section 21 of the Act.

9. 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. 1,15,00,000/- (rupees one crore fifteen lakh only) has been claimed to be payable to the petitioner towards retention money and for the value of work executed.

Stand of the State:

10. The petition has been opposed by filing a reply by the State stating that the work had been abandoned and the claim is time-barred. The dispute was only raised vide letters dated 07.05.2025 and 03.06.2025 seeking amicable settlement of alleged outstanding payments and release of the bank guarantee. A notice for the appointment of a sole

Arbitrator was only issued on 14.07.2025, which was rejected by the Chief Engineer (SZ) HP PWD Shimla on 12.08.2025 on the ground that the claims were beyond the contract agreement. No cause of action had arisen and it has been pleaded that the work to the extent of 29.08% had been executed amounting to Rs. 52,66,697/- which stood released. An amount of Rs.13,79,899/- towards liquidated damages is still to be recovered from the Contractor and there is no balance payment due to be paid to the Contractor. A sum of Rs.43,60,069/- had been released to the Contractor after making statutory deductions against the work done and no balance payment is to be made to the Contractor. The work was required to be commenced on 10.06.2019 and to be completed in all respects by 09.11.2020, but the Contractor failed to maintain the progress of the work as per milestone of the contract agreement and to complete it. Contractor Management meetings were convened on 25.09.2020 and 05.10.2020 under the chairmanship of the Superintending Engineer and the show cause

notice had been issued to the petitioner 24.03.2022. The petitioner failed attend the meetings and thereafter avoided departmental communications, telephonic communications and left the work abandoned, leading to the termination of the agreement by the Execution Engineer vide letter dated 09.05.2022, which was approved by the Chief Engineer (SZ) HP PWD, Shimla vide his letter dated 22.06.2022 (Annxure R-6). The bank guarantee amounting to Rs.9,51,150/- had lapsed on 23.04.2022, the balance amount of liquidated damages amounting to Rs. 13,89,899/- and the security amount to the tune of Rs. 3,62,813/-, total Rs.10,27,086/- are yet to be recovered from the petitioner.

11. It is further averred that merely issuing a legal notice, dated 14.07.2025 does not extend the limitation period or confer any right upon the petitioner and a representation made by the petitioner before the Governor or any other authority does not alter the contractual rights and obligation of

the parties. The communication from the Governor's Secretariat was strictly an administrative communication and did not constitute a direction for release of payment.

Reasons for Dismissal:

12. It is in this background, the petition is patently time-barred, as the cause of action arose in 2022 when the contract was terminated and the petition had been filed after an inordinate, unexplained delay. Even assuming the breaking point had been reached between the parties on 09.05.2022, 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 notice 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.

13. 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.

14. 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.

15. 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.

16. 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. 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."*

17. Keeping in view the above, this Court is of the considered opinion, that initiating the appointment of an Arbitrator would only defeat the the interests of the State on account of inaction on the part of the petitioner.

18. It is also pertinent to mention that in **Arbitration Case Nos. 149, 151, 156 & 157 of 2025,** 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 case. Resultantly, this Court has no option but to dismiss the petition. Thus, the claim is not maintainable, being time-barred.

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

(G.S. Sandhawalia)
Chief Justice.

October 09, 2026
(hemlata)