2026:HHC:42788

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

**Arb. Case No. 401 of 2025**
**Reserved on *: 25.09.2026.***
**Pronounced on*: 01.10.2026***
**Uploaded on: 01.10.2026**

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*M/s Krishna Highbase Pvt. Ltd.*

*.....Petitioner*

*Versus*

*State of Himachal Pradesh & 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: Mr. Suneet Goel, Senior Advocate with Mr. Vishwas Kaushal, Advocate.

For the Respondents: Mr. Navlesh Verma, Additional Advocate General.

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

The petitioner seeks the appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). The work in question was for the construction of Keoldhar Seri Sainj Bagra Road Km. 0/0 to 19/0 (SH:-Passing Plac2026:HHC:42788 e, B/Wall, C.D. and V-Shape Drain etc. (portion Naglog

High Court of H.P.

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to Balidhar road Km. 11/0 to 19/0 for an amount of Rs.1,98,42,159/- with stipulated time for its completion as 18 months to be reckoned up till 9.11.2016.

2. The formal letter of award was issued 26.10.2018 (Annexure P-2) and thereafter, formal Agreement No. 196 of 2018-2019 (Annexure P-3) was entered into between the parties, which contained Arbitration Clause 25 to settle disputes through arbitration.

3. It is the pleaded case of the petitioner that the project site was located in a snowbound area. Even though machinery was mobilized in March, 2019, but the work could not be completed on account of heavy snowfall in the winter of 2020, leaving the tarring work unexecuted. The work apparently remained incomplete, leading to the imposition of liquidated damages on 20.05.2021 (Annexure P-4), wherein the Executive Engineer, Karsog Division had noticed that the work had not been completed and tarring had not been carried

High Court of H.P.

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out, despite issuing repeated notices dated 16.10.2020, 21.11.2020, 09.04.2021 and 23.04.2021. Resultantly, there was breach of the relevant clause of the contract and liquidated damages were imposed @ 10% of the awarded amount, totaling Rs. 19,84,215/-, while directing the resumption of the work.

4. The work was subsequently rescinded on 27.05.2021 (Annexure P-5) in terms of clause 3(ii)(iii) and 3(a) of the contract agreement and the security deposit in respect of the said work alongwith the earnest money in the shape of an FDR, was forfeited.

5. Apparently, the petitioner took no action on the same and only submitted a representation after 2½ years on 07.12.2023 (Annexure P-6) to waive off the penalty as levied upon it and also to release the security amount, while admitting that the tender had already been closed.

6. On 24.05.2025 (Annexure P-7), the Executive Engineer, Karsog Division wrote to the District Collector, Mandi regarding history of the

High Court of H.P.

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litigation that approximately 62.89% of the work, amounting to Rs.1,24,79,172/- had been completed and the penalty as such had been reduced to Rs.7,36,200/- vide letter dated 26.06.2021. Further, the security deposit of Rs.4,72,965/- had been forfeited vide various transfer entry orders, leaving an un-covered sum of Rs.7,36,200/- under Clause 29 of the Agreement and steps were being taken to blacklist the Contractor, as per letter dated 08.04.2025. Resultantly, a total sum of Rs. 10,33,665/- was sought to be recovered, inclusive of the interest at the rate of 9%.

7. Apparently, thereafter, the petitioner woke up and sent a legal notice dated 05.09.2025 (Annexure P-9) seeking the appointment of an Arbitrator, mentioning the aforesaid facts and alleging that the security had been forfeited without affording an opportunity of being heard, challenging wrong imposition of penalty, claiming price escalation etc. It was also mentioned that arrears were being recovered through the Sub-Divisional

High Court of H.P.

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Magistrate, Karsog and reference was made to the notice issued in that regard.

8. Learned Senior Counsel for the petitioner submitted that a representation dated 07.12.2023 (Annexure P-6), had been filed and therefore, the present petition is within limitation from the said date.

9. The State, on the other hand, it its reply has specifically stated there exists no dispute between the parties which can be referred to arbitration. The contract having been rescinded and terminated way back in May, 2021, the appointment of an Arbitrator could not be sought in the year 2025, after a lapse of about four years. Therefore, the petition deserves to be dismissed.

10. In the replication, it has been pleaded that the cause of action arose when the communication dated 24.05.2025, was sent to the District Collector, Mandi to recover the liquidated damages and thus, the period of limitation should be computed from the said date.

High Court of H.P.

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11. This Court is not in agreement with the arguments raised by the learned Senior Counsel for the petitioner. The representation dated 07.12.2023 (Annexure P-6) made by the petitioner was only to the extent of waiving off the penalty as levied upon it and releasing the security deposit. No such claim was made regarding the forfeiture of the security deposit, nor any prayer was made for referring the matter to arbitration. The petitioner was satisfied as such, did not complete the work and never sought to resolve the issue by referring the matter to the arbitration. The starting point as such to count the limitation would be from 27.05.2021 when the contract was rescinded.

12. The issue is no longer *res integra* since three Judge Bench of the Apex Court in ***Elfit Arabia and Another Vs. Concept Hotel Barons Limited and Others (2024) SCC OnLine SC 1739***, has held that the Court must 'cut the deadwood' by refraining from appointing an arbitrator when claims are ex

High Court of H.P.

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facie time-barred and dead, or where no subsisting dispute exists.

13. Reliance can also be placed upon 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.

14. 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

High Court of H.P.

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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. 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.*
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> *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."*

High Court of H.P.

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15. Resultantly, it was held that the case was hopelessly time-barred and the petition was found to have been filed after more than a period of five years. Even though, there was an arbitration clause, but the same could not be acted upon on account of inordinate delay.

16 In such circumstances, in the present case, it is held that the contract with the Contractor was rescinded on 27.05.2021. Merely because amount was to be recovered on account of the land revenue and the Executive Engineer, Karsog Division wrote to the District Collector, Mandi on 24.05.2025 (Annexure P-7), the period of limitation would not be extended, as contended by the learned Counsel for the petitioner. Thus, the legal notice issued on 05.09.2025 invoking the arbitration clause, was far beyond the limitation period of three years, which had expired in May, 2024.

17. Resultantly, the petition being time-barred, no occasion is made out to refer the parties to arbitration and it is accordingly dismissed.

High Court of H.P.

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Pending application(s), if any, also stands disposed of.

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

**October 01, 2026**
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High Court of H.P.

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