IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Case: Arb P No.14/2025
c/w
Arb P No.15/2025
Arb P No.16/2025
Arb P No.17/2025

Reserved on: 27.02.2026
Pronounced on : 06.03.2026
Uploaded on : 06.03.2026
Whether the operative part or full judgment is pronounced: Full

M/s Ace Consultants

....Petitioners

Through:- Mr. Javaid Ahmed, Advocate

V/s

J&K Projects Construction Corporation Limited and Ors.

.....Respondents

Through:- Mr. Jahangir Dar, GA

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)

01. By this common judgment, the afore-titled four arbitration petitions involving identical parties and common questions of law and fact are proposed to be decided together.

02. The petitioner, a proprietorship firm, has filed the present petitions under Section 11 (6) of the Arbitration and Conciliation, 1996 (hereinafter to be referred to as **'Act'**) seeking appointment of an independent arbitrator preferably a

retired judge of this Court for adjudication of disputes that have arisen between the parties.

03. The subject matter of the arbitration petition No. 14 of 2025 is allotment order No. **Mech XII/2518-22** dated 10.12.2012 relating to **'Supply, Installation, Testing and Commissioning of Two No's. G plus four 26 passenger bed lifts and one No. 400 kgs capacity G plus four dumb weightier at JLNM Hospital Rainawari Srinagar'.** It has been submitted that whole of the amount due for the work done has not been released by the respondents and their outstanding claims have not been cleared so far. The petitioner has placed on record copy of certificate dated 21.10.2013 issued by respondent No. 3, which shows that in respect of the contract in question, the total cost of work was Rs. 67.00 lacs out of which payment of Rs. 40.00 lacs has been released and the balance outstanding payment is Rs. 27.00 lacs.

04. The subject matter of the arbitration petition No. 15 of 2025 is allotment order No. **Mech XII/2543-47** dated 10.12.2012 relating to **'Supply, Installation, Testing and Commissioning of one No. G + four 13 passenger electric traction lift at Sarie Building, Shreen Bagh, Srinagar'.** It has been submitted that the respondents have not cleared whole of the amount in respect of the aforesaid work. According to the certificate issued by respondent No. 3 on 21.10.2013, the cost of the allotted work was Rs. 22.50 lacs

out of which an amount of Rs. 5.00 lacs has been released in favour of the petitioner leaving a balance of Rs. 17.50 lacs.

05. The subject matter of the arbitration petition No. 16 of 2025 is allotment order No. **Mech XII/2523-27** dated 10.12.2012 relating to **'Supply, Installation, Testing and Commissioning of Two No's. (G plus 03 and G plus 04) 26 passenger bed L D at Hospital Hazuri Bagh, Srinagar'.** According to the petitioner, entire outstanding amount has not been released in its favour and as per certificate issued by respondent No. 3, total cost of the allotted work was Rs. 58.00 lacs out of which an amount of Rs. 52.20 lacs has been released in favour of the petitioner, leaving a balance amount of Rs. 5.80 lacs.

06. The subject matter of the arbitration petition No. 17 of 2025 is allotment order No. **Mech XII/2538-42** dated 10.12.2012 relating to '**Supply, Installation, Testing and Commissioning of Two No's. (G +2) 26 passenger bed lifts at District Hospital, Baramulla'.** It has been submitted that as per certificate dated 21.10.2013 issued by respondent No. 3 total cost of the work was Rs. 57.00 lacs out of which an amount of Rs. 39.90 lacs has been released in favour of the petitioner leaving a balance of Rs. 17.10 lacs.

07. It has been contended by the petitioner that a writ petition bearing WP(C) No. 2057/2017 was filed by it seeking a direction upon the respondents for releasing the pending payments and vide order dated 20.12.2017, the writ petition

was disposed of with a direction that the petition be treated as representation on behalf of the petitioner and the respondents to accord consideration to the claim of the petitioner as detailed in the writ petition and to take a decision in accordance with law.

08. It has been submitted that despite directions of the writ court, the respondents did not decide the claim of the petitioner and ultimately the petitioner was constrained to file a contempt petition bearing CPOWP No. 214/2018 against the respondents. During the pendency of the contempt petition, consideration order No. 166 of 2019 dated 23.12.2019 came to be issued by the respondents whereby claim of the petitioner in respect of the aforesaid four allotted works was rejected. Pursuant to the passing of the aforesaid consideration order, the contempt petition was disposed of by this Court in terms of order dated 22.10.2020 whereby liberty was granted to the petitioner to pursue the appropriate remedy as available under law.

09. It has been submitted that all the afore-mentioned four allotment orders contain an arbitration clause providing that in case of any dispute arising between the parties, the matter shall be referred to arbitration and that decision of the arbitrator shall be binding upon both the parties.

10. It has been submitted that the petitioner could not invoke the arbitration clause immediately upon disposal of the contempt petition, because of Covid-19 pandemic and it was

only on 16.05.2023 that the petitioner addressed a communication to the respondents invoking the arbitration clause and seeking appointment of an arbitrator in all the four cases. However, when the respondents failed to take any action in terms of the arbitration clause, the instant petitions came to be filed before this Court on 15.05.2025 seeking appointment of arbitrator.

11. No reply has been filed by the respondents to any of the four petitions and, therefore, right to file reply was closed.

12. I have heard learned counsel for the parties and perused record of the case.

13. Learned counsel for the respondents has raised objection with regard to the maintainability of these petitions on the ground that the claims projected by the petitioners in these petitions are stale and time barred and thus, have become dead and non-arbitrable. It has been contended that even the letter seeking invocation of arbitration clause issued by the petitioner is hopelessly time barred and, therefore, the present petitions are not maintainable.

14. This Court has, while analyzing the legal position with regard to scope of pre-referral jurisdiction under section 11(6) of the Act in the case of **Promark Techsolutions Pvt. Ltd Vs. UT of J&K & ors** (Arbitration Petition No. 45 of 2024 along with connected petitions decided on 29.12.2025), observed as under:

"9. The Supreme Court has, in the case of ***Vidya Drolia v. Durga Trading Corporation,*** *(2021) 2 SCC 1, while dealing with the scope of power of the Referral Court under Sections 11 and 8, held that at the referral stage, if it is found that the claims are ex-facie time barred and dead and there is no subsisting dispute, the reference can be refused. The relevant observations of the Supreme Court are reproduced as under:*

> *"**148.** Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd, it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.*
>
> *xxx xxx xxx xxx xxx*
>
> *154.……154.4**.** Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. 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. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.*

*10. Taking note of the aforesaid ratio laid down in **Vidya Drolia's** case (supra), the Supreme court in the case of **Bharat Sanchar Nigam Ltd. v. M/S Nortel Networks India Pvt. Ltd.,** (2021) 5 SCC 738, observed as under:*

> ***44.*** *The issue of limitation which concerns the "admissibility" of the claim, must be decided by the Arbitral Tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties.*
>
> ***xxx xxx xxx xx***
>
> ***47.*** *It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal.*
>
> ***48.*** *Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time-barred by over 5½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 4-8-2014. The notice of arbitration was invoked on 29-4-2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.*
>
> ***49.*** *The present case is a case of deadwood/no subsisting dispute since the cause of action arose on 4-8-2014, when the claims made by Nortel were rejected by BSNL. The respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the final bill by making deductions.*

*11. In **NTPCL Limited vs. SPML Infra Limited,** (2023) 9 SCC 385, the Supreme Court, while discussing the scope of jurisdiction of the Court under Section11(6) of the Act, made the following observations:*

> ***25.*** *The abovereferred precedents crystallise the position of law that the pre-referral jurisdiction of the Courts under Section 11(6) of the Act is very*

narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

26. *As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the Referral Court may reject claims which are manifestly and ex facie non-arbitrable. Explaining this position, flowing from the principles laid down in Vidya Drolia , this Court in a subsequent decision in Nortel Networks held (Nortel Networks case SCC p. 764, para 45)*

> *"45. … 45.1. … While exercising jurisdiction under Section 11 as the judicial forum, the Court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute."*

27. *The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review [and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration.*

28. *The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non-arbitrable [Ibid.]. It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources. Further, as noted in Vidya Drolia , if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court . Therefore, this Court or a High Court, as the case may be, while exercising jurisdiction under*

> *Section 11(6) of the Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator, as explained in DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd.*

12. *Recently, the Supreme Court in the case of* ***Aslam Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd.,*** *(2025) 1 SCC 502, after surveying previous judgments on the issue made the following observations:*

> ***43.*** *Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.*
>
> ***44.*** *After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.*
>
> ***45.*** *As observed by us in Krish Spg., the power of the referral Court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral Court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral Court delves into the domain of the Arbitral Tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims.*
>
> ***46.*** *Moreover, the courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the courts may take a second look at the adjudication done by the Arbitral Tribunal at a later stage, if considered necessary and appropriate in the circumstances.*

13. *From the foregoing analysis of the legal position, it is clear that at the time of considering a petition under Section 11(6) of the Act, unless it is shown that the claim is ex-*

facie time barred or hopelessly time barred, the Court exercising power under Section 11(6) of the Act for appointment of Arbitrator should not reject such application. If there is slightest doubt with regard to arbitrability of the claim on account of it being time barred, the issue for determination in this regard should be left to the Arbitrator and the Court while exercising its power under Section 11 of Act should not venture to determine the said issue at reference stage."

14. In the same case, this court also considered the question as to what is the period of limitation for a claim to become non-arbitrable or stale and what is the period of limitation for filing a petition under section 11 of the Act. In this regard, paras 15 to 18 of the said judgment are relevant to the context and same are reproduced as under:

"15. Section 43 of the Act provides that Limitation Act, 1963, shall apply to arbitrations as it applies for proceedings in court. Sub-section (2) of the said provision further provides that the arbitration shall be deemed to have commenced on the date referred in Section 21 whereas Section 21 of the Act provides that unless otherwise agreed by the parties, the arbitral proceedings in commenced on the date on which a request for reference of the dispute to arbitration is received by the respondent.

16. A conjoint reading of these provisions would show that the provisions of the Limitation Act apply to all proceedings under the Act, both in court and in arbitrationexcept to the extent expressly excluded by the provisions of the Act. In this regard, support can be drawn from the ratio laid down by the Supreme Court in the case of ***Consolidated Engineering Enterprises v. Irrigation Department,*** *(2008) 7 SCC 169*

17. In the Arbitration Act, no limitation period has been prescribed for filing an application under Section 11.

Therefore, Article 137 of the Schedule to the Limitation Act would apply, meaning thereby that the period of limitation for filing an application under Section 11 of the Act would arise when right to apply accrues to the petitioner. There is distinction between the period of limitation for enforcing a claim against a party and the period of limitation for filing a petition under Section 11 of the Act. The Supreme Court has, in the case of ***J. C. Budhraja v. Orissa Mining Corporation Ltd.*** *(2008) 2 SCC 444, explained the distinction between the period of limitation for filing a petition and the period of limitation as to the claims being barred by time, in the following manner:*

> *"**25.** The learned counsel for the appellant submitted that the limitation would begun to run from the date on which a difference arose between the parties, and in this case the difference arose only when OMC refused to comply with the notice dated 4-6-1980 seeking reference to arbitration. We are afraid, the contention is without merit. The appellant is obviously confusing the limitation for a petition under Section 8(2) of the Arbitration Act, 1940 with the limitation for the claim itself. The limitation for a suit is calculated as on the date of filing of the suit. In the case of arbitration, limitation for the claim is to be calculated on the date on which the arbitration is deemed to have commenced.*
>
> ***26.** Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in Major (Retd.) Inder Singh Rekhi v. DDA, Panchu Gopal Bose v. Board of Trustees for Port of Calcutta and Utkal Commercial Corpn. v. Central Coal Fields Ltdalso make this position clear.*

18. From the foregoing analysis of legal position, it is deduced that the cause of action for filing a petition under Section 11 of the Act would arise when the opposite party fails to comply with the notice invoking arbitration clause whereas limitation for the claim has to be calculated on the day on which the arbitration is deemed to have commenced. Thus, the cause of action for filing a petition under Section 11 of the Act would arise when the respondent fails to respond to the notice for invocation of arbitration clause and the limitation with regard to claim, which is subject matter of arbitration, has to be calculated as on date when the notice for invocation of arbitration clause is issued. Therefore, if the claim of a party filing a petition under Section 11 of the Act is time barred as on date of invocation of the arbitration clause, then, of course, his claim would qualify to be a dead claim and, as such, non-arbitrable. Similarly, if a party files a petition beyond a period of three years after invocation of the arbitration clause, his petition will be time barred."

15. With the aforesaid legal position in mind, let us now analyze the facts of the present case. As per the case of the petitioner, its claim was rejected by the respondents when consideration order dated 23.12.2019 came to be passed by the respondents pursuant to directions passed by the writ court. It is to be noted that in spite of passing of the said order, the petitioner continued to pursue the contempt proceedings, which came to be closed on 22.10.2020 leaving it open to the petitioner to avail appropriate remedy.

16. Admittedly the arbitration clause has been invoked by the petitioner in May 2023. The cause of action for invoking the arbitration clause arose in favour of the petitioner

only when the respondents declined its claim by passing consideration order dated 23.12.2019 and thereafter when the court, exercising contempt jurisdiction, refused to interfere in the matter leaving it open to the petitioner to avail appropriate remedy. Thus, when the petitioner invoked the arbitration clause in May 2023, the same was done by it within the prescribed period of three years. Thereafter the petitioner has filed the instant petition in May, 2025 well within the prescribed period of three years from the date of invocation of arbitration clause.

17. Thus, it cannot be stated that the claim of the petitioner is *ex facie* time barred because it has invoked the arbitration clause within three years of refusal of respondents to entertain its claim and the present petition has been filed within three years of invocation of the arbitration clause. Though this issue has to be gone into and analyzed by the arbitral tribunal before considering the claims of the petitioner on merits, this Court, while exercising its power under Section 11 (6) of the Act, cannot go into this issue and it is only the arbitral tribunal, who can go into all these issues during arbitral proceedings.

18. For the aforesaid reasons, the objection raised by the respondents with regard to maintainability of these petitions and non-arbitrability of the claims of the petitioner on account of the same being time barred is rejected. Once it is held that issue with regard to arbitrability of the claims of the

petitioner/company on the ground of limitation is a matter, which is required to be gone into by the arbitral tribunal and once it has been found that there is a arbitration clause existing between the parties, which has been invoked by the petitioner without any response from the respondents, there is no other option available with this Court except to refer the disputes arising between the parties to arbitral tribunal.

19. Accordingly, the petitions are disposed of by referring all the disputes and differences covered by the agreements, to the learned Sole Arbitrator in the following terms:

(I) Hon'ble Mr. Justice Rashid Ali Dar, former judge of this Court, is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.

(II) A copy of this order be communicated to the learned Sole Arbitrator by the Registry of this Court within a period of ten days from today.

(III) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the Act of 1996 to the parties within a period of two weeks from the date of receipt of this order.

(IV) The parties shall appear before the learned Sole Arbitrator on a date and place to be fixed by the learned Sole Arbitrator.

(V) All the arbitral costs and fee of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to final award that may be passed by the learned Arbitrator in relation to the costs.

(VI) The learned Arbitrator shall, before proceeding to decide the merits of the claims, decide the issue with regard to limitation after hearing the parties.

(SANJAY DHAR)
JUDGE

JAMMU
06.03.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **No**

...