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AC-130-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 22nd OF JULY, 2026ARBITRATION CASE No. 130 of 2025*M/S KAILA DEVI AND SONS**Versus**NATIONAL INSTITUTE OF TECHNICAL TEACHERS TRAINING AND
RESEARCH BHOPAL AND OTHERS*

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Appearance:

Shri Ram Chandra Somani - Advocate through VC with Shri Hemant Tripathi, learned counsel for the applicant.

Shri Aditya Vikram Singh Kaurav, learned counsel for the respondents No.1 and 2.
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ORDER

The present application has been filed by the applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) for appointment of an Arbitrator to resolve the dispute arose between the parties pursuant to terms of an agreement Annexure A/1.

2. It is the case of the applicant that the applicant has entered into a contract of construction of Woman Hostel at NITTTR Bhopal with Non-applicant Director NITTTR Bhopal on 06.03.2014 for amount of Rs. 1,63,00,291/- i.e. 9.7 % above departmental estimated amount of Rs. 1,48,59,519/- time allowed was 18 months from 22 days after the date of issue of acceptance letter dated 31.01.2014 i.e. stipulated date of completion was 22.08.2015. Letter of commencement of work was issued on 24.02.2014. However, that contract work could not be completed due to



non-supply of approved drawings and defective designs.

3. It is submitted by learned counsel for the applicant that the applicant requested drawing, design, and decisions on sewage line vide various letters dated 1.8.14, 1.09.14, 8.10.14, 18.3.15, 27.7.15, 16.11.15, 7.12.15, 11.1.16, 17.7.17, 06.03.19, 25.1.21, 22.11.21, 7.1.22, 7.10.22, 10.1.23 and 3.3.23 but no solution was given by non-applicants. However, the non-applicant No. 2 Dean (E&M) foreclosed the contract vide letter dated 18.05.2023 (Annexure-4). The foreclosure notice was replied to by applicant vide letter dated 20.06.23. However, the non-applicant Dean (E and M) has intimated vide letter dated 30.06.23 (Annexure-5) that foreclosure of contract was final. The applicant submitted second running bill vide letter dated 04.01.2024 for executed work which was revised vide letter dated 08.08.2024. Thereafter, the applicant received letter dated 04.07.2025 from Non-applicant No.1 /Director NITTTR Bhopal threatening recovery of so called cost of the work. The applicant has written letter dated 29.7.25 (Annexure-6) narrating complete facts and submitted following claims due to illegal action of non-applicants. Non-applicant No.2 vide letter dated 6.8.25 (Annexure-7) acknowledged the amount of executed work for Rs. 18,70,320.33 and illegally intimating arbitrary recovery amounts of 4,92,654.00+1,53,998,47 and Rs. 28,82,279/- after adjusting payable amount requested for deposit of so-called balance amount of Rs. 16,58,611/- all other claims were rejected vide letter dated 14.8.25 (Annexure-8). It is submitted that the dispute so raised by the Applicant is admittedly a dispute covered under the Agreement, the applicant vide letter dated 29.8.2025 (annexure 2) invoked arbitration



clause and requested the non-applicants for appointment of arbitrator, however, the non-applicants failed to act on the request of appointment of an Arbitrator.

4. Per contra, learned counsel for the non-applicants submits that applicant has deliberately omitted that the contract was not foreclosed on account of any arbitrary action on the part of the Non-Applicants, but because serious structural deficiencies and quality defects were detected in the work executed by the Applicant, which was also confirmed through the independent inspection conducted by the CPWD and MANIT. It is further submitted that applicant has failed to bring on record the report furnished by the CPWD, wherein, it was found that the structural integrity of the foundation and RCC components had been seriously compromised and consequently recommended demolition of the entire existing structure followed by fresh construction in accordance with revised design vide its report annexure AR/2. It is submitted that the steps taken by applicant were afterthought in order to escape from the repayment sought by non-applicant towards the cost of demolition. Moreover, the applicant has invoked the arbitration clause at a belated stage to linger on the legitimate claim of the non-applicant.

5. Heard learned counsel for the parties and perused the record.

6. In the present case in hand, from perusal of record it is evident that the non-applicants themselves has issued the letter in the year 2025 that the amount which has paid for construction is to be recovered because of condition of the building which has been reported by the CPWD, which itself



shows that there is a dispute between the parties. It is also admitted position between the parties that an arbitration clause exists between the parties. The, notice invoking arbitration was issued on 29.8.2025. In between there were several communications between the parties, therefore, it cannot be said to be a stale case or time barred. However, the question in regard to whether the matter is time barred or a stale case or not is not the domain of the High Court to decide as it contains disputed question of facts, which is to be determined by the Arbitrator. Any question which goes to the root of the matter including the jurisdiction and limitation is always to be determined by the Arbitrator in view of the law laid down by the Hon'ble Apex Court in the case of **Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.**, (2020) 2 SCC 455 and in the case of **Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.**, (2025) 1 SCC 502.

8. The Hon. Apex Court in the case of **Uttarakhand Purv Sainik Kalyan Nigam Ltd. (supra)**, while over-ruling the order of this Court in the case of **Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coalfield Limited**, 2018 (4) MPLJ 45, has held that after the amendment in the Act of 1996, section 6A has been inserted which provides that all the questions in regard to jurisdiction, limitation or which goes to the root shall be decided by the Arbitrator and those are not to be decided by this Court at the referral stage. For ready reference the principle laid down in Para 7 is reproduced here and below :-

"7. We have heard the learned counsel for the parties and perused the pleadings.

7.1. Section 21 of the 1996 Act provides that arbitral proceedings commence on the date on which a request for disputes to be referred to arbitration is received by the respondent.



7.2. In the present case, the notice of arbitration was issued by the petitioner Contractor to the respondent Company on 9-3-2016. The invocation took place after Section 11 was amended by the 2015 Amendment Act, which came into force on 23-10-2015, the amended provision would be applicable to the present case.

7.3. The 2015 Amendment Act brought about a significant change in the appointment process under Section 11: first, the default power of appointment shifted from the Chief Justice of the High Court in arbitrations governed by Part I of the Act, to the High Court; second, the scope of jurisdiction under sub-section (6-A) of Section 11 was confined to the examination of the existence of the arbitration agreement at the pre-reference stage.

7.4. Prior to the coming into force of the 2015 Amendment Act, much controversy had surrounded the nature of the power of appointment by the Chief Justice, or his designate under Section 11. A seven-Judge Constitution Bench of this Court in *SBP & Co. v. Patel Engg. Ltd.* [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] defined the scope of power of the Chief Justice under Section 11. The Court held that the scope of power exercised under Section 11 was to first decide:

- (i) whether there was a valid arbitration agreement; and
- (ii) whether the person who has made the request under Section 11, was a party to the arbitration agreement; and
- (iii) whether the party making the motion had approached the appropriate High Court.

7.5. Further, the Chief Justice was required to decide all threshold issues with respect to jurisdiction, the existence of the agreement, whether the claim was a dead one; or a time-barred claim sought to be resurrected; or whether the parties had concluded the transaction by recording satisfaction of their mutual rights and obligations, and received the final payment without objection, under Section 11, at the pre-reference stage. The decision in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* was followed by this Court in *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]*, *Master Construction [Union of India v. Master Construction Co., (2011) 12 SCC 349 : (2012) 2 SCC (Civ) 582]*, and other decisions.

7.6. The Law Commission in the 246th Report [Amendments to the Arbitration and Conciliation Act, 1996, Report No. 246, Law Commission of India (August 2014), p. 20.] recommended that:

“33. ... the Commission has recommended amendments to Sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the court/judicial authority finds that the arbitration agreement does not exist or is null and void. Insofar as the [Ed.: The matter between two asterisks has been emphasised in original.] nature [Ed.: The matter between two asterisks has been emphasised in original.] of intervention is concerned, it is recommended that in the event the court/judicial authority is prima facie satisfied against the



argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the Arbitral Tribunal.”

(emphasis supplied)

7.7. Based on the recommendations of the Law Commission, Section 11 was substantially amended by the 2015 Amendment Act, to overcome the effect of all previous judgments rendered on the scope of power by a non obstante clause, and to reinforce the kompetenz-kompetenz principle enshrined in Section 16 of the 1996 Act. The 2015 Amendment Act inserted sub-section (6-A) to Section 11 which provides that:

“(6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.”

(emphasis supplied)

7.8. By virtue of the non obstante clause incorporated in Section 11(6-A), previous judgments rendered in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* and *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]*, were legislatively overruled. The scope of examination is now confined only to the existence of the arbitration agreement at the Section 11 stage, and nothing more.

7.9. Reliance is placed on the judgment in *Duro Felguera S.A. v. Gangavaram Port Ltd. [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764. Refer to TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]*, wherein this Court held that: (SCC p. 759, para 48)

“48. ... From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple — it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.”

(emphasis supplied)

7.10. In view of the legislative mandate contained in Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which



enshrines the kompetenz-kompetenz principle.

7.11. The doctrine of “kompetenz-kompetenz”, also referred to as “compétence-compétence”, or “compétence de la reconnue”, implies that the Arbitral Tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of the arbitration agreement. This doctrine is intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties. The doctrine of kompetenz-kompetenz is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. The draft agreement would be a mere proposal to arbitrate, and not an unequivocal acceptance of the terms of the agreement. Section 7 of the Contract Act, 1872 requires the acceptance of a contract to be absolute and unqualified [*Dresser Rand S.A. v. Bindal Agro Chem Ltd.*, (2006) 1 SCC 751. See also *BSNL v. Telephone Cables Ltd.*, (2010) 5 SCC 213 : (2010) 2 SCC (Civ) 352. Refer to *PSA Mumbai Investments Pte. Ltd. v. Jawaharlal Nehru Port Trust*, (2018) 10 SCC 525 : (2019) 1 SCC (Civ) 1] . If an arbitration agreement is not valid or non-existent, the Arbitral Tribunal cannot assume jurisdiction to adjudicate upon the disputes. Appointment of an arbitrator may be refused if the arbitration agreement is not in writing, or the disputes are beyond the scope of the arbitration agreement. Article V(1)(a) of the New York Convention states that recognition and enforcement of an award may be refused if the arbitration agreement “is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made”.

7.12. The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal.

7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, “including any objections” with respect to the existence or validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including



jurisdictional objections are to be decided by the arbitrator.

7.14. In the present case, the issue of limitation was raised by the respondent Company to oppose the appointment of the arbitrator under Section 11 before the High Court. Limitation is a mixed question of fact and law. In *ITW Signode (India) Ltd. v. CCE* [*ITW Signode (India) Ltd. v. CCE*, (2004) 3 SCC 48] a three-Judge Bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law. Reliance is also placed on the judgment of this Court in *NTPC Ltd. v. Siemens Atkeingesellschaft* [*NTPC Ltd. v. Siemens Atkeingesellschaft*, (2007) 4 SCC 451], wherein it was held that the Arbitral Tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34. In *Iffco Ltd. v. Bhadra Products* [*Iffco Ltd. v. Bhadra Products*, (2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208] this Court held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the Uncitral Model Law which enshrines the kompetenz principle.

9. This view has also been taken by the Larger Bench of the Hon'ble Apex Court in the case of **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)**, (2025) 4 SCC 641, wherein it is held that at the stage of deciding an application for appointment of an Arbitrator, the Court must not conduct an intricate enquiry into the matter, where the claim raised by the applicant is time barred and should be left open for determination by the Arbitrator. Such an approach gives true meaning to the view taken in the case of **Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re**, (2024) 6 SCC 1.

10. As per the mandate of Section 11(6)(A), the referral court was only required to see the arbitrability leaving all the questions to be decided



by the arbitrator. However, section 11(6)(A) has been omitted in 2019 which has been specifically dealt with by the Hon'ble Apex Court in the case of *BSNL vs. M/s Nortel Networks India Pvt. Ltd. (2021) 5 SCC 738*. The relevant para is reproduced hereunder :

37. After the amendment by the 2019 Amendment to Section 11 is notified, it will result in the deletion of sub-section (6-A), and the default power will be exercised by arbitral institutions designated by the Supreme Court, or the High Court, as the case may be.

37.1. It is relevant to note that sub-section (6-B) in Section 11, has not been amended by the 2019 Amendment Act. Sub-section (6-B) provides that the designation of any person, or institution by the court, shall not be regarded as a delegation of “judicial power”. Consequently, it would not be open for the person or institution designated by the court to exercise any judicial power, and adjudicate on any issue, including the issue of validity of the agreement, or the arbitrability of disputes.

37.2. The amendment to sub-section (8) of Section 11 by the 2019 Amendment [which is also yet to be notified], provides that the arbitral institution will be empowered to : (a) seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of Section 12, to secure the appointment of an independent and impartial arbitrator; and (b) ensure that the arbitrator has the qualifications required by the arbitration agreement.

11. The Hon'ble Apex Court in *Arif Azim Co. Ltd. vs. Aptech Limited (2024) 5 SCC 313* has held :

70. The scope of this primary examination has been carefully laid down by a three-Judge Bench of this Court in *Vidya Drolia v. Durga Trading Corpn.* [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] as follows : (SCC pp. 119 & 121, paras 148 & 154.4) “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 the 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. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)]*, 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.

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.”

(emphasis supplied)

71. The aforesaid decision in *Vidya Drolia* [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] was relied upon and reaffirmed in another decision of this Court in *NTPC Ltd. v. SPML Infra Ltd.* [*NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385] wherein the “*Eye of the needle*” test was explained as follows : (*SPML Infra case* [*NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385] , SCC pp. 401-402, paras 25-28)

“*Eye of the needle*

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 [Vidya Drolia case, (2021) 2 SCC 1, para 154.4] . Explaining this position, flowing from the principles laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , this Court in a subsequent decision in Nortel Networks [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 45.1 : (2021) 3 SCC (Civ) 352] held : (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 [Vidya Drolia case, (2021) 2 SCC 1, para 134] and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. [Vidya Drolia case, (2021) 2 SCC 1, para 154.4] 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. [Nortel Networks case, (2021) 5 SCC 738, para 47] On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration [Vidya Drolia case, (2021) 2 SCC 1, para 154.4] .

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 [Vidya Drolia case, (2021) 2 SCC 1, para 154.4] . It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources [Vidya Drolia case, (2021) 2 SCC 1, para 139] . Further, as noted in Vidya



Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , 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 [Vidya Drolia case, (2021) 2 SCC 1, para 139] . 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. [DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd., (2021) 16 SCC 743, paras 22 & 26] ”

(emphasis in original and supplied)

12. The said view has been diluted by the Hon'ble Apex Court in the case of *Aslam Ismail Khan Deshmukh vs. ASAP Fluids Private Limited (2025) 1 SCC 502*, wherein the Hon'ble Apex court has held as under :-

50. As evident from the aforesaid discussion and especially in light of the observations made in *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754]* , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.

51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process....

52. In order to balance such a limited scope of judicial



interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.

53. The existence of the arbitration agreement as contained in Clause 13.10 of the shareholders' agreement is not disputed by either of the parties. The submissions as regards the claim of the petitioner being ex facie time-barred may be adjudicated upon by the Arbitral Tribunal as a preliminary issue.

54. In view of the aforesaid, the present petitions are allowed. Taking into consideration the fact that an Arbitral Tribunal comprising of a sole arbitrator, Mr Mayur Khandeparkar (Advocate, High Court of Judicature at Bombay) has already been constituted for the adjudication of disputes between the same parties in relation to the service agreement dated 18-10-2011, it would be desirable to constitute an Arbitral Tribunal comprising of the same sole arbitrator for adjudication of the present disputes pertaining to the shareholders' agreement dated 25-7-2011. The fees of the arbitrator including other modalities shall be fixed in consultation with the parties.

55. In the facts of the present case, it would be apposite to observe that, in the event the Arbitral Tribunal ultimately finds the present claims of the petitioner to be time-barred, it may direct that the costs of the arbitration pertaining to these claims be borne solely by the petitioner herein.

56. It is made clear that all the other rights and contentions of the parties are left open for adjudication by the learned arbitrator.

13. In the present case in hand, there was continuous correspondence between the parties, however, the non-applicant has foreclosed the contract vide letter dated 18.5.2023 on the basis of report submitted by the CPWD wherein proposal for dismantling of the structure has been given. The applicant has invoked arbitration clause by issuing notice to the non-applicants vide notice dated 29.8.2025 but the non-applicants denied the claim of the applicants vide their letter dated 26.9.2025 (annexure A/3).



Thus, there exists a dispute between the parties. Any factual inquiry on disputed question of fact and law even in regard to limitation cannot be done by this Court in the light of aforesaid judgments passed by the Hon'ble Apex Court. Thus, in the light of judgment passed in the case of **Aslam Ismail Khan Deshmukh (supra)** and keeping in view that fact that there exists arbitration clause and the dispute still exists between the parties which can be resolved by the Arbitrator, the application is allowed.

14. Considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur, following order is passed :

- (i) Shri Justice Anurag Shrivastava, Former Judge, High Court of M.P., House No.61, Nandgaon Colony, near Gaytri Vihar, Baagmugaliya, Bhopal (M.P.), Contact No.94250-15986, Email - anuragshrivastava986@gmail.com, who has consented in terms of Section 11(8) of the Act of 1996, is appointed as sole Arbitrator to resolve the dispute between the parties in the case.*
- (ii) Arbitrator shall issue the notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Bhopal.*
- (iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.*
- (iv) Director of Madhya Pradesh Arbitration Centre, Domestic and International, Jabalpur (M.P.D.I.A.C.) shall communicate the decision of this Court to the Sole Arbitrator.*
- (v) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to substitute Arbitrator.*

15. With the aforesaid directions, the Arbitration Case is disposed of.

(DEEPAK KHOT)
JUDGE



HS

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AC-130-2025