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AC-20-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 20th OF JULY, 2026ARBITRATION CASE No. 20 of 2025*RAM SUJAN GUPTA**Versus**UNION OF INDIA AND OTHERS*

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Appearance:

Mr. Atul Kumar Jain - Advocate for applicant.

Mr. S.M. Guru - Deputy Solicitor General for the Union of India.

Mr. Arnav Tiwari - Advocate for respondent no.2.

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ORDER

I.A. No.4186 of 2025 is an application for exemption from filing original/certified copy of arbitration agreement and under Rule 31 of Chapter X of M.P. High Court Rules, 2008

For the reasons mentioned in the application, I.A. No.4186 of 2026 is hereby allowed and disposed of.

The present application has been filed by the applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act of 1996' for the sake of brevity) read with Rule 19 of Chapter IV of MP High Court Rules, 2008 for appointment of an Arbitrator for resolution of dispute arose between the parties pursuant to an agreement dated 25.03.2014.

2. Learned counsel for the applicant submits that pursuant to the Letter of Acceptance dated 26.11.2013, a contract incorporating Clauses 63 and 64



of the General Conditions of Contract (GCC) was executed on 25.03.2014, containing an arbitration agreement. Although the work was required to be completed within nine months, the completion period was extended on seven occasions solely on account of delays attributable to the respondents. Consequently, the applicant suffered substantial losses and damages. It is further submitted that after completion of the work in April, 2020, the respondents deliberately withheld preparation of the final bill and the final Price Variation Clause (PVC) bill and compelled the applicant to furnish a "No Claim Certificate", which, according to the applicant, was obtained under coercion and, therefore, is not binding.

3. It is submitted by learned counsel for the applicant that the applicant raised a quantified claim by representation dated 09.03.2022 under Clause 63 of the GCC and thereafter invoked the arbitration agreement by notice dated 15.09.2022 seeking appointment of an arbitrator. However, the respondents declined the request by contending that the value of the claim exceeds 20% of the contract value and, therefore, the dispute is not arbitrable. It is contended that the respondents have misconstrued the contractual provisions. According to learned counsel, the restriction relating to claims exceeding 20% of the contract value applies only to claims arising out of extra or additional work contemplated under Clause 43 of the GCC and not to claims for damages or compensation arising from breach of contract. It is submitted that the applicant's claim is one for compensation under Section 73 of the Indian Contract Act, 1872 on account of delays attributable to the respondents and, therefore, falls outside the scope of the restrictive clause.



Consequently, the refusal to appoint an arbitrator is unsustainable and this Court may appoint an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

4 . *Per contra*, learned counsel for the respondents opposes the application and submits that the applicant's request for appointment of an arbitrator is not maintainable in view of Clauses 63 and 64 of the General Conditions of Contract. It is submitted that the applicant has raised claims exceeding 20 % of the contract value. In terms of the contractual provisions, disputes involving claims beyond the prescribed limit are excluded from the scope of arbitration and constitute "excepted matters". Therefore, the respondents rightly declined the applicant's request for appointment of an arbitrator by their reply to the notice invoking arbitration. Accordingly, it is contended that as the dispute is not arbitrable under the terms of the contract, no arbitrator can be appointed under Section 11(6) of the Arbitration and Conciliation Act, 1996, and the application deserves to be dismissed.

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

6. From perusal of the agreement dated 25.03.2014, it is evident that the agreement contains an arbitration clause. From a further perusal of the reply dated 22.09.2022 (Annexure A/4) to the notice invoking arbitration, it is apparent that the respondents have not disputed the existence or validity of the arbitration agreement. The only objection raised therein is that, since the value of the claims exceeds 20% of the contract value, in terms of Clauses 63 and 64 of the General Conditions of Contract, the dispute is not arbitrable and, therefore, appointment of an arbitrator is not permissible. The



respondents have reiterated the same objection in their reply to the present application under Section 11 of the Arbitration and Conciliation Act, 1996, contending that the disputes raised by the applicant fall within the category of "excepted matters" and are, therefore, outside the scope of arbitration.

7. The Hon. Apex Court in the case of *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455*, 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 principal 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 reconnu”, 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.

8. 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.

9. A coordinate Bench of this Court (Gwalior Bench), almost in similar facts and circumstances in the case of **Bharti Infratel Ltd. v. Ram Gopal Tripathi**, 2013(4) M.P.L.J. 430 has opined as under:-

13. In view of this judgment also, it is clear that the appellant cannot be permitted to raise argument for the first time at appellate stage by way of amendment or by way of oral submission. The matter can be examined from yet another angle. Clause 9 of the Arbitration Agreement reads as under:—

“Any dispute or claim between the parties hereto arising out of or relating to this agreement, or its implementation and/or its effect, or the breach, termination, shall be referred to the



arbitration of a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be held in Indore.”

14. A minute reading of this provision makes it crystal clear that the jurisdiction of Arbitrator was very wide. He had jurisdiction to decide the questions regarding implementation of the agreement and also its effect. The words “arising out of or relating to this agreement or its implementation/or its effect” has very wide meaning. If the Arbitrator is well within his jurisdiction (it is not in dispute here) with regard to his action in terminating the contract, whether it can be said that his direction for giving effect to the said finding for implementation of the contract is bad in law, impermissible or beyond jurisdiction. In other words, if the agreement gives him the authority to decide about arbitration and other aspects of the agreement with further authority to pass appropriate orders regarding implementation and the effect of contract, in my opinion, the clause of the agreement was wide enough to give this power to the Arbitrator for directing the present appellant to remove the tower from the roof head of the respondents. Therefore, even other wise, the jurisdiction is very much there with the Arbitrator to pass the second portion of the order against which eye brows are raised for the first time before this Court. Accordingly, on the basis of aforesaid analysis, this petition must fail on both the counts.



15. In the considered opinion of this Court, at the cost of repetition, it is clear that the appellant cannot be permitted to raise the ground of jurisdiction of Arbitrator for the first time by way of oral submission before this Court. Secondly, the Arbitrator, as per Clause-9 of the Agreement, was well within his jurisdiction to direct removal of the tower from the roof head of the respondents. The agreement was in fact an agreement for equipment and not agreement of rent as canvased by the appellant. On the basis of aforesaid reasons, I find no reason to disturb the orders passed by the Arbitrator and the Appellate Court. The appeal fails and is hereby dismissed. No cost.

10. When the case of the applicant is tested on the anvil of the law laid down by Hon. Apex Court as well as by this Court, this court is of the considered opinion that now the consistent view of the Hon. Apex court is that all the questions going to the root including limitation and jurisdiction are to be decided by the Arbitrator.

11. In view of the law laid down by the Hon'ble Apex Court as well as by this Court in the case of *Ram Gopal Tripathi* (supra), it is the opinion of this Court that the question in regard to jurisdiction can be raised before the Arbitrator thus the application is allowed. The respondent is at liberty to raise all objections including the objection of jurisdiction before the Arbitrator.

12. Considering the list of empanelled Arbitrator issued by the M.P. Arbitration Centre, Jabalpur, following order is passed :-



(i) Shri Rajendra Kumar Srivastava, Former Judge, High Court of M.P., Address 41, Phase-II, Maa Narmade Nagar, Bilhari, Jabalpur (M.P) 482020, Mob. No.94258-14900, e-mail : rkshrivastava079@gmail.com, who has given his consent 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 Jabalpur.

(iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rules, 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.

13. Arbitration case is **disposed of**.

(DEEPAK KHOT)
JUDGE

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