IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 19th OF AUGUST, 2026

ARBITRATION CASE No. 19 of 2026

THE M/S N.K. ENTERPRISES GAHILGARH

Versus

THE NORTHERN COAL FIELD LTD

Appearance:

Shri Abhyuday Singh - Advocate for applicant.

Shri Sandeep Kumar Shukla - Advocate for the respondent.

ORDER

Heard on I.A.No.2603/2026, which is an application seeking exemption from filing original or certified copy of the agreement.

For the reasons mentioned in the application, the same is allowed.

Applicant is exempted from filing original or certified copy of the agreement.

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 Non-Applicant issued NIT No. GM(C)/SGR/20-21ETN-130 dated 08.03.2021 for "Repairing of pavement of Dozer Section Complex with rail at Amlohri Project", pursuant to which

the Applicant submitted his offer and being found L-1, was awarded the contract vide LOA No. NCL/GM(C)/LOA-41/ETN-130/836 dated 27.09.2021, followed by execution of the agreement dated 07.03.2022 (Ann. A/1). The work was scheduled to commence on 20.01.2022 and was to be completed within 150 days; however, the Applicant could not complete the work within the stipulated period due to non-supply of the required rail material by the Department, as duly recorded in the Hindrance Register, resulting in stoppage of work from 20.01.2022 to 20.09.2022. The Department thereafter extended the completion period, and the work was ultimately completed on 28.02.2023.

3. It is submitted that due to departmental hindrance, the applicant suffered escalation in the cost of execution of work contract. The Applicant accordingly submitted representations dated 15.07.2022 and 01.03.2023 (Annexure A/6) claiming Rs.21,55,807.82 towards escalation, followed by further representation dated 17.06.2023 (Annexure A/7) regarding acceptance of the final measurement under protest and representation dated 17.08.2024 (Annexure A/8) invoking Clause 2.6 of the Agreement relating to price variation/escalation. Despite repeated requests, the escalation claim was not considered, though no penalty or deduction was imposed upon the Applicant for the delayed completion, which was due to departmental hindrances. The Applicant thereafter invoked the in house arbitration mechanism by representations dated 28.09.2024 (Annexure A/2) and 11.11.2024 (Annexure A/3) seeking appointment of a sole Arbitrator under Clause 16/16-A of the Agreement, followed by legal notice dated

03.02.2025 (Annexure A/4) and reminder dated 18.11.2025 (Annexure A/5), but the Non-Applicant failed to take any effective action. It is submitted that the dispute so raised by the Applicant is admittedly a dispute covered under the Agreement, the applicant vide letters dated 28.09.2024 (annexure A/2) & 11.11.2024 (annexure A/3) respectively invoked arbitration clause and requested the non-applicant for appointment of arbitrator, however, no action has been taken for payment towards escalation or appointment of an Arbitration for settlement of disputes between the parties.

4. Per contra, learned counsel for the non-applicant submits that the applicant is not entitled to claim escalation under the agreement dated 07.03.2022. The stipulated period for completion was 150 days, i.e. less than six months/180 days, and Clause 2.6 of the Additional Terms and Conditions expressly provides that the Price Variation Clause shall not apply to works having a stipulated completion period of six months or less. The work was completed on 28.02.2023 after extensions were granted in accordance with the contractual provisions. However, mere extension of time does not create any independent right to escalation where no such entitlement exists under the agreement. The final bill was released and accepted by the applicant on 30.10.2023.Accordingly, in view of the express contractual bar on escalation for works having a stipulated completion period of less than 180 days, the applicant has no contractual entitlement to the claim. The claim for escalation is therefore misconceived, contrary to the terms of the agreement, and liable to be rejected.

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 agreement was executed on 7.3.2022 (annexure A/1) between the parties pursuant to the NIT issued by the non-applicant dated 08.03.2021 for "Repairing of pavement of Dozer Section Complex with rail at Amlohri Project". It is further evident that applicant made representation on 15.7.2022 before the Staff Officer (Civil)/Engineer-in-Charge requesting to consider payment of escalation. Further, representations were made by the applicant on 1.3.2023 (annexure A/6) claiming Rs.21,55,807.82 towards escalation, and 17.8.2024 (annexure A/8) invoking Clause 2.6 of the Agreement relating to price variation/escalation. However, despite repeated requests, the escalation claim was not considered. The Applicant thereafter invoked the in house arbitration mechanism by representations dated 28.09.2024 (Annexure A/2) and 11.11.2024 (Annexure A/3) seeking appointment of a sole Arbitrator under Clause 16/16-A of the Agreement, followed by legal notice dated 03.02.2025 (Annexure A/4) and reminder dated 18.11.2025 (Annexure A/5), but no action has been taken for payment towards escalation or appointment of an Arbitration for settlement of disputes between the parties. The contention of the non-applicant is that mere extension of time does not create any independent right to escalation where no such entitlement exists under the agreement.

7. The question in regard to whether the applicant is eligible for escalation of payment or not it 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 recognized", 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. The Hon'ble Apex court in the case of **Aslam Ismail Khan Deshmukh (supra)** 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.
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> 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.

11. Considering the fact that there exists arbitration clause and the dispute still exits between the parties. The question whether the applicant is eligible for payment of escalated cost or not including jurisdiction and limitation is always open to be agitated before the arbitrator in view of the law laid down by the Hon'ble Apex Court in the cases referred hereinabove, thus this application is allowed.

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

(i) Shri Pankaj Gaur, Retd. District Judge (Supertime), Address - A4,

FF1 & 2, Ideal Hills, Gwarighat Road, Jabalpur (M.P.) 482008, Mob.94254-45773, Email. pankajgaur59@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 Jabalpur.

(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.

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

(DEEPAK KHOT)
JUDGE

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