IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CARBA No. 01 of 2020
Reserved on: 25.09.2026
Decided on : 09.10.2026
Uploaded on: 09.10.2026

Union of India

... Appellant

Versus

M/s Vij Engineer and Consultants
Private Limited

…Respondent

Coram
Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. Balram Sharma, Deputy Solicitor General of India.

For the respondent : Mr. Rakesh Kumar Thakur, Advocate.

Bipin Chander Negi, Judge

The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been preferred against the judgment dated 25.07.2019, passed by the learned Single Judge in ***CARBC No.05 of 2018***, titled as ***Union of India vs. M/s Vij Engineer and Construction Pvt. Ltd.***, whereby the learned Single Judge has dismissed the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996, by the present appellant against the award passed by the sole arbitrator dated 16.10.2017.

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?* Yes

2. A contract for the design and construction of a 50 meters span steel superstructure over the departmentally constructed substructure over Koksar-II Nallah on the Manali-Sarchu Road under Project Deepak in the State of Himachal Pradesh was awarded to the respondent-Contractor vide letter dated 15.11.2010 for Rupees 1.90 Crores. Work order dated 24.05.2010 was placed on the Contractor, in terms of the contract agreement for execution of the work. As per the work order, the date of commencement was 24.05.2010 and the date of completion of the work was 23.02.2011.

3. The Contractor completed 77% of the work amounting to Rs.1,46,30,000/- till 11.10.2010, as per the approved billing schedule, and an amount of Rs.1,22,55,388/- was paid to the Contractor in this respect. Subsequent thereto, work under the contract agreement was suspended w.e.f. 21.11.2010.

4. During the suspension of work, the steel superstructure of the bridge, in the case at hand, had got damaged due to a moving avalanche. The said incident had happened in the month of February, 2011. The Board of Officers convened by the Chief Engineer, Project Deepak, assessed the damage to the bridge and recommended the construction of a fresh multi-cell box culvert. The proposal so made was approved by the competent authority on 17.08.2011. The contract, in the case at hand, was terminated on 14.11.2011.

5. In the aforesaid facts and attending circumstances, a revised approximate estimate was forwarded to the headquarters DGBR vide letter dated 9th January, 2014. In the claim petition filed, specifically in para 9.2 thereof (at page 69 of the record of the arbitrator), it has been pleaded that the revised approximate estimate had not been completed till 19.02.2016. In the reply filed to the statement of claim made by the respondent-Contractor dated 27.02.2017 (page 132 of the arbitrator's record, specifically page 131 of reply (b)(i) last two lines), the present appellant before the Arbitrator admitted that the balance had to be paid, however contended that no payment could be made due to paucity of funds. Further in the statement of claim dated 23.02.2017 duly signed by the Chief Engineer Deepak Project appended with the reply (page 103-101 of the arbitrator's record), it has been contended therein, in Paragraph-8 that no payment could have been made without sanction of the revised approximate estimate. In this respect, a reference has been made to a letter dated 24th January, 2014 issued by the headquarters DGBR. Other than the aforesaid, in Paragraph-9, it has been mentioned that the instructions dated 08.01.2015 issued by the headquarters DGBR to clear all dues of the Contractor in the case at hand can only be implemented after sanction of revised approximate estimate.

6. Heard counsel for the parties and perused the record.

7. The scope of interference in the appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 is limited. It is constrained by the grounds specified in Section 34 thereof and the Court cannot undertake an independent assessment of the merits of the award by re-appreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. The Court, under Section 37 of the Act must only determine whether, while considering objections preferred under Section 34 of the Act, Court has exercised its jurisdiction properly and rightly, without exceeding its scope. (See **AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321*).***

8. In the aforesaid backdrop, the first and foremost contention which has been raised by the appellant is qua the claim of the respondent-contractor/claimant being time-barred. The issue of limitation, in essence, goes to the maintainability or admissibility of the claim, which is to be decided by the Arbitral Tribunal and is not a challenge to the jurisdiction of the arbitrator to decide the claim itself. (see ***BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738).*** A plea of limitation cannot be decided as an abstract principle of law divorced from facts, as in every case, the starting point of limitation has to be ascertained, which is entirely a question of fact. Hence a plea of limitation is a mixed question of law and fact. To be decided with the aid of proper pleadings, the framing of an issue of limitation

and taking of evidence. (***Urban Infrastructure Real Estate Fund v. Neelkanth Realty (P) Ltd., (2026) 4 SCC 166).***

9. In this respect a reference to Section 21 of the Arbitration and Conciliation Act would be relevant. The same reads as under:

> ***"21.Commencement of arbitral proceedings***
>
> *Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

10. The purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not. From a bare reading of the aforesaid provision, it is evident that the arbitral proceedings commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. **(see *State of Goa v. Praveen Enterprises, (2012) 12 SCC 581)*.**

11. In the aforesaid legal matrix, suffice it to state that in the case at hand, the sole Arbitrator had been appointed by the appellant on 26.10.2016 (Page 1 of the record of the arbitrator). Vide the same, the Arbitrator had been called upon to adjudicate disputes *inter-se* the parties and as per the same qua claims which were duly covered under the final, binding powers of officers in the contract, for which there is a specific prohibition in the contract, was the Arbitrator

requested to first decide issues of jurisdiction, arbitrability. Hence, it is evident that the appellant had given acquiescence in the appointment of the Arbitrator and had never raised the issue of limitation, i.e., claims being barred in the case at hand at the stage of referring the matter to arbitration. Besides, in the response filed to the claim petition nor at a subsequent stage during arbitration, objection with respect to the claim being time-barred was ever raised.

12. Paragraph 10 of the statement of case dated 23.02.2017 duly signed by the Chief Engineer Deepak Project appended with the reply (page 103-101 of the arbitrator's record) makes it evident that a request for appointment of an Arbitrator, in the case at hand, had been made as early as on 21.03.2015 (relevant date for the purpose of Section 21 of the Act).

13. The contract in question had been entered into on 15.05.2010. The date of commencement was 24.05.2010 and the date of completion was 23.02.2011. Work was suspended on 21.11.2010. While work was suspended, the steel superstructure of the bridge in question got damaged due to a moving avalanche. The Board of Officers had assessed the quantum of damage and recommended the construction of a fresh multi-cell box culvert to the bridge. The recommendation so made was approved on 17.08.2011. In the aforesaid factual and attending circumstances, the contract had been terminated on 14.11.2011.

14. The Contractor had completed 77% of the work, amounting to Rs. 1,46,30,000/-, as per the approved billing schedule (running account receipt appended with the reply filed to the claim petition), out of which an amount of Rs. 1,22,55,388/- has been paid. In the statement of case dated 23.02.2017, it is the case of the appellant, herein, that no further payment could be made to the Contractor till such time the revised approximate estimate, in the case at hand, was sanctioned by the competent authority. As per the statement of case dated 23.02.2017 duly signed by the Chief Engineer Deepak Project, it is evident that till January, 2014, the revised approximate estimate had not been determined. Further, in the statement of case dated 23.02.2017 duly signed by the Chief Engineer Deepak Project, it has been averred that the balance amount was required to be paid, however, the same could not be paid due to paucity of funds. In the aforesaid facts and attending circumstances, the claim of the respondent-Contractor/claimant was a live claim/within limitation at the time of initiation of arbitration proceedings, in the case at hand.

15. The other contention raised is with respect to the payment of interest and loss of profit. It is contended on behalf of the appellant that either of the two dues could have been paid. The argument so raised is fallacious and needs to be rejected for the following reasons. For 77% of the work executed, the value was

Rs.1,46,30,000/-. However, the Contractor was paid only Rs.1,22,55,388/-. On the said count, i.e., less payment was paid, while dealing with Claim No. 1(a), the Arbitrator has awarded a sum of Rs.24,05,862/-. Further in this regard, while dealing with Claim No. 1(b), after considering Section 31(7)(a) and (b) of the Arbitration and Conciliation Act, on the amount awarded under Claim No. 1(a), the Arbitrator has correctly awarded interest for the pre-reference period, *pendente lite*, and future.

16. Loss of profit has been assessed as Claim No.3 by the Arbitrator. The loss of profit has not been claimed on account of work not executed, rather, the same has been claimed on the amount due to the respondent-Contractor, but not paid by the appellant-Department (Claim Nos.1 and 2). Claim No.1 comprised payment for less payment made for 77% work executed and Claim No.1(b) pertained to interest on the defaulted amount for the pre-reference, *pendente lite*, and future periods. Claim No.2 pertained to escalation and damages.

17. In the aforesaid facts and attending circumstances, loss of profit has been granted on account of the lost opportunity of the respondent-Contractor/claimant to invest his money due and payable by the respondents, wherefrom he could have earned profit. In this regard, the Arbitrator has appropriately considered Clause 57 of the Contract, Section 73 of the Indian Contract Act, 1872, and reliance

has been correctly placed on the judgments of the Uttarakhand High Court. There exists no infirmity in the findings so returned and hence calls for no interference from this Court in its limited jurisdiction. No other contention has been raised.

18. Consequently, we find no merit in the appeal, and the same is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

9th October, 2026
(Tarun Singh)