



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

Arb P No. 98/2025
CM No. 1410/2026 &
Arb P No. 99/2025
CM No. 1456/2026

Reserved on: 12.03.2026
Pronounced on : 25.03.2026
Uploaded on : 25.03.2026
Whether the operative part or full
judgment is pronounced: Full

M/s K.K. Enterprises

....Petitioners

Through:- Mr. Anil Mahajan, Advocate.

V/s

Union of India and Ors.

.....Respondents

Through:- Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI.

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

JUDGMENT

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

02. The petitioner-firm has filed the present petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as "**Act**") seeking



appointment of an arbitrator for adjudication of disputes that have arisen between the parties.

03. Pleadings of Arb. P No. 98 of 2025

3.1 As per case of the petitioner-firm, pursuant to tender floated by respondent No. 1 through respondent No. 3, its bid was declared as successful and vide letter No. 8818/68/E8 dated 23.03.2007, the contract relating to **“repair of internal electrification in certain buildings in 213 Transit Camp at Jammu”** for an amount of Rs. 4,39,311.86 was allotted in his favour. It is case of the petitioner that an agreement came to be executed between it and respondent No. 1 through respondent No. 3. The date of commencement of work was 29.03.2007 with date of completion as 28.09.2007.

3.2 According to the petitioner, the site was handed over to it in part on 29.03.2007 whereafter the work was completed and the building was handed over to the respondent-department. It has been submitted that because the respondent did not hand over all the buildings for execution of work to the petitioner, as such, it was unable to execute the work at old quoted rates. Accordingly, the petitioner asked the respondents to execute fresh agreement as it was not feasible to execute the balance work at old quoted rates. It has been submitted that payment in respect of the work, which was already done by the petitioner, has not been



settled and the respondents have not performed their contractual obligations relating to handing over of all buildings for execution of the work.

3.3 It has been averred that vide letter/order dated 24.09.2012, respondent No. 3 constituted a Board of Officers to ascertain the quantum of work executed by the petitioner and the Board submitted its report dated 07.03.2013 with the recommendation that the staff, who has made the payment, be called and the payment made to the contractor be got recorded in the measurement book before finalizing the case. However, respondent No. 3 vide letter dt. 24.09.2012 cancelled the contract w.e.f., 30.09.2012.

3.4 It has been submitted that vide communications dated 15.05.2024 and 01.02.2025, the petitioner requested respondent No. 2, the designated authority, to appoint the arbitrator to decide the disputes that have arisen between the parties. The petitioner has given the details of claims that, according to it, have arisen against the respondents. It has been submitted that as many as 14 claims have arisen and an amount of Rs. 92,88,279.64 along with interest @ 18% per annum is due and payable to the petitioner.

3.5 It has further been submitted that vide communication dated 09.08.2024 issued by respondent No. 3, the petitioner was asked to furnish an undertaking that it has no objection for change in appointing authority so that the



appointing authority may take a decision in the matter. This was responded to by the petitioner vide communication dated 02.09.2024 informing that it does not agree to the same. It is in these circumstances that the petitioner has filed the present petition seeking appointment of arbitrator.

3.6 The respondents have filed their objections to the petition in which it has been submitted that the petition is hopelessly time barred, as such, liable to be dismissed. It has been contended that the petitioner has suppressed material facts and that it has not approached the Court with clean hands. According to the respondents, the petitioner did not execute the work as per the agreed time schedule and failed to complete the entire work despite issuance of several slow progress notices. This ultimately led to cancellation of the contract on 24.09.2012. सत्यमेव जयते

3.7 It has been submitted that the petitioner issued notice dated 20.06.2013 requesting for appointment of arbitrator but its request was not acceded to. According to the respondents, two more communications came to be addressed by the petitioner to the appointing authority on 05.04.2016 and 09.06.2020 seeking appointment of arbitrator.

3.8 It has been contended that limitation period for filing a petition under Section 11(6) of the Act would start running against the petitioner from thirty days after the issuance of notice dated 20.06.2013 for invocation of the



arbitrator clause and the present petition has been filed in November, 2025, as such, the same is hopelessly time barred.

3.9 It has been submitted that communication dated 09.08.2024 issued by respondent No. 3 is a routine official letter and does not have any consequence and bearing upon the limitation period for filing of the petition under Section 11(6) of the Act. It has been further submitted that respondent No. 3 is not the appointing authority, as such, it is not competent to appoint the arbitrator.

3.10 When the objection with regard to maintainability of the petition on the ground of limitation was taken by the respondents, the petitioner came up with application bearing CM No. 1410 of 2026 and placed on record a copy of communication dated 02.11.2023 addressed by it to Commander Works Engineer, Jammu and also a copy of communication dated 29.08.2023 addressed by respondent No. 3 to the petitioner.

04. Pleadings in Arb. P No. 98 of 2025

4.1 As per case of the petitioner-firm pursuant to tender floated by respondent No. 1 through respondent No. 3, it was declared as successful bidder in terms of communication No. 8818/59/30/E8 dated 07.12.2006 and the contract relating to **“repair of internal electrification work and replacement of GLS lamps at Satwari”** was allotted in its favour. The cost of the contract was Rs. 7,95,210.54/-. Pursuant to the allotment



letter, an agreement came to be executed between the petitioner and respondent No. 3. The date of commencement of work was fixed as 11.12.2006 with date of completion as 10.06.2007.

4.2 It has been submitted that the site was handed over to the petitioner only in part on 11.12.2006 and the entire site was never handed over to it for execution of the contract. The petitioner executed the work and informed the respondents that all the buildings have not been handed over to it, as such, the petitioner is unable to execute the work at old quoted rates. Accordingly, the petitioner requested the respondents for execution of a fresh agreement. It has been submitted that respondent-department did not have material in store, as such, there was delay in execution of the work. It has been further submitted that final bill has not been settled and paid to the petitioner as yet. It has been alleged that the respondents have not performed their contractual obligation relating to handing over of all buildings to the petitioner.

4.3 It has been averred that vide letter dated 24.09.2012, respondent No. 3 constituted a Board of Officers to ascertain the quantum of work carried out by the petitioner and the Board, vide its report dated 07.03.2013, recommended that the staff, who has made the payment be called and the payment made to the contractor be got recorded in the measurement book before finalizing the case. However,



respondent No. 3, vide its letter No. 24.09.2012, cancelled the contract w.e.f., 30.09.2012.

4.4 It has been submitted that the petitioner vide its communications dated 15.05.2024 and 01.02.2025, has invoked the arbitration clause and requested respondent No. 2, the designated authority, to appoint the arbitrator to decide the disputes that have arisen between the parties. According to the petitioner, as many as 15 claims are outstanding against the respondents which amount to Rs. 1,08,90,547.40/- along with interest @ 18% per annum.

4.5 It has further been submitted that vide communication dated 09.08.2024, respondent No. 3 called upon the petitioner to furnish an undertaking that it has no objection to change in appointing authority to which the petitioner responded vide its communication dated 02.09.2024 informing that it does not agree to change in the designated authority. Accordingly, the present petition seeking appointment of arbitrator has been filed by the petitioner.

4.6 The Respondents in their reply to the petition have raised preliminary objection to the maintainability of the petition on the ground that the same is hopelessly time barred. It has been further submitted that the petitioner has suppressed material facts from this court and has not approached the Court with clean hands. It has been alleged that the petitioner could not complete the work within the



agreed time schedule despite issuance of several slow progress notices. This ultimately led to cancellation of the contract in terms of communication dated 24.09.2012.

4.7 It has been submitted that vide notice dated 19.06.2013, the petitioner made a request for appointment of arbitrator before the designated authority by invoking the arbitration clause but its request was not acceded to. Another communication to the same effect was addressed by the petitioner on 05.04.2016. It has been contended that limitation period for approaching the Court for appointment of arbitrator started to run against the petitioner after one month of issuance of notice dated 19.06.2013, as such, the present petition is hopelessly time barred.

4.8 In so far as communication dated 09.08.2024 issued by respondent No. 3, it has been contended by the respondents that the same is a routine official letter and because the said communication has not been issued by the designated authority, as such, the same does not have bearing upon the limitation period for approaching this Court for appointment of the arbitrator.

4.9 When the respondents raised the objection with regard to maintainability of the petition on the ground of limitation, the petitioner came up with application bearing CM No. 1456 of 2026 and placed on record a copy of the communication dated 30.10.2023 addressed by it to the



Commander Works Engineer, Jammu. The other documents, which have been placed on record, are copy of the communication dt. 21.09.2023 addressed by respondent No. 3 to the petitioner, copy of communication dated 16.11.2023 addressed by the Commander Works Engineer, Jammu to the petitioner, copy of Communication dated 02.12.2023 addressed by the Commander Works Engineer, Jammu to the petitioner and copy of Communication dated 24.11.2023 addressed by the petitioner to the Commander Works Engineer, Jammu.

05. Discussion and Legal Analysis

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

5.2 The main objection that has been raised by the respondents to the maintainability of both the afore-titled petitions is that the same are hopelessly barred by time inasmuch as the arbitration clause has been invoked by the petitioner in the year 2013 whereas, the present petitions have been filed after a lapse of more than twelve (12) years. The petitioner, on the other hand, has contended that the matter relating to settlement of dispute between the parties has always remained under consideration of the respondents and the petitioner has invoked the arbitration clause in the year 2024/2025 to which respondent No. 3 has responded in terms of communication dated 09.08.2024 whereby the petitioner



was asked to furnish an undertaking expressing its no objection to the change in the designated authority, which was not acceded to by the petitioner and conveyed vide communication dated 02.09.2024.

5.3 Before dealing with the merits of the rival contentions of the parties, it would be appropriate to analyze the legal position as regards the limitation period for filing a petition under Section 11(6) of the Act.

5.4 The issue whether Limitation Act, 1963 is applicable to an application for appointment of an arbitrator under Section 11(6) of the Act came up for consideration before the Supreme Court in the case of **Arif Azim Company Ltd Vs. Aptech Limited, (2024) 5 SCC 313**. The Supreme Court observed that a petition under Section 11(6) of the Act of 1996 would be covered under Article 137 of the Limitation Act, which prescribes a limitation period of three years from the date when the right to apply accrues. It was further observed by the Supreme Court that limitation period for filing an application seeking appointment of an arbitrator was to commence only after a valid notice, invoking arbitration, had been issued by one of the parties to the other party and there had been either a failure or refusal on the part of the other party to comply with the requirement of the said notice.

5.5 The ratio laid down in the aforesaid decision was further explained by the Supreme Court in the case of



“Aslam Ismail Khan Deshmukh Vs. Asap Fluids Pvt. Ltd., (2025) 1 SCC 520”. After noticing the ratio laid down in **Arif Azim’s case** (supra), the Supreme Court observed as under:

39. Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the Act, 1996, 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. 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.

5.6 From the foregoing analysis of the legal position, it is clear that an application under Section 11(6) of the Act has to be filed within three years from the date of failure or refusal on the part of the adverse party to respond to the letter of invocation of arbitration agreement. Thus, the breaking point, which gives rise to commencement of cause of action in favour of a party approaching the court under Section 11(6) of the Act, is the refusal/neglect on the part of the adverse party or



the designated authority to respond to the letter invoking arbitration agreement. The cause of action would start running against the party approaching the court from that date and once it starts running, it would not stop running against the party approaching the court thereafter. Section 9 of the Limitation Act, which is applicable to the arbitration proceedings, makes it clear that once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.

5.7 Coming to the facts of the present case, according to the petitioner, it has invoked the arbitration clause only on 15.05.2024 read with communication dated 01.02.2025 in both the cases. However, the respondents, in their reply, have pleaded and placed on record communications dated 19.06.2013/20.06.2013 addressed by the petitioner to the designated authority, namely, Chief Engineer, Pathankot Zone praying for reference of disputes to sole arbitration. The respondents have also placed on record communication dated 05.04.2016 whereby the petitioner has repeated its request for reference of disputes to the arbitration. Both these communications have been suppressed by the petitioner while filing the petitions. It is not the case of the petitioner that these communications were not addressed by it to the designated authority, therefore, it can safely be stated that the petitioner has invoked the arbitration clause in both the cases



in June, 2013 itself. The present petitions have been filed in November, 2025, which is more than twelve and a half years after invocation of the arbitration clause by the petitioner.

5.8 Learned counsel for the petitioner has laid much emphasis on the subsequent correspondence, which has been exchanged by the parties after the invocation of the arbitration clause by the petitioner in the year 2013. Much emphasis has been laid on communication dated 09.08.2024 addressed by respondent No. 3 to the petitioner whereby the petitioner was asked to file an undertaking that it has no objection to the change in the designated authority so that arbitrator can be appointed. The said communication in the opinion of this Court does not extend the period of limitation, *firstly*, because the said communication has not been addressed by the appointing authority and *secondly* because the time for commencement of the limitation period against the petitioner had started to run immediately upon service of notice of invocation of arbitration clause upon the designated authority and the same would not stop in any circumstances whatsoever. All the subsequent developments that have taken place after the invocation of arbitration clause would not save the period of limitation from running against the petitioner. Mere reiteration and repetition of letters, invoking arbitration agreement emanating from the petitioner, would not extend



the period of limitation for approaching this Court in connection with appointment of arbitrator.

5.9 Merely because the respondents may not have taken any action or responded to the request of the petitioner for appointment of arbitrator made in June, 2013, would not defer the date from which the cause of action would arise in favour of the petitioner. Once the petitioner had asserted its claim and the respondents had failed to respond to the claim relating to appointment of an arbitrator, such failure has to be treated as denial of request of the petitioner and, therefore, the cause of action for filing petition under Section 11(6) of the Act would arise after waiting for a reasonable time which, in the circumstances, cannot be more than one month of service of notice of invocation of letter upon the respondents.

5.10 Apart from the above, the petitioner is guilty of suppression of material facts from this Court and it has conveniently suppressed the previous invocation letters of June, 2013 and April, 2016 so as to give an impression to the Court that it was only in the year 2024/2025 that arbitration clause was invoked by it. Even when the respondents brought the invocation letters of June, 2013 and April, 2016 to the notice of this Court, the petitioner did not amend the petition so as to explain the circumstances under which the aforesaid letters and events were suppressed by it from this Court. Unless it is pleaded as to in what circumstances and on what



facts period of limitation is sought to be extended from the date on which the cause of action originally arose, there cannot be any basis to save the period of limitation from running against the petitioner. In the present cases, the petitioner, instead of pleading anything to this effect, has suppressed the material facts from the Court.

06. Conclusion:

6.1 From the foregoing discussion, it is clear that the present petitions are hopelessly barred by time and as such, the same are liable to be dismissed on that ground alone.

6.2 Accordingly, both the petitions are dismissed being barred by limitation.



**(SANJAY DHAR)
JUDGE**

**JAMMU
25.03.2026
Naresh/Secy.**

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Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**