2026:AHC-LKO:29790-DB

AFR

Reserved On :- April 9, 2024

Pronounced On :- April 27, 2026

Uploaded On :- April 27, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

WRIT - C No. - 10703 of 2025

Sri Rajendra Prasad Singh

.....Petitioner(s)

Versus

M/s Arch Construction Thru. Partner Sri Santosh Kumar Singh and 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Nirmit Srivastava, Tejas Singh, Aakched Nath
Counsel for Respondent(s)	:	Ritesh Kumar Srivastava, Alok Kumar Singh

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Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

SHEKHAR B. SARAF, J.: This is a writ petition under Article 226 of the Constitution of India for the issuance of

a writ of certiorari seeking quashing of the order dated October 9, 2025, passed by a Sole arbitrator (hereinafter also referred to as the 'Arbitral Tribunal/respondent no.3') whereby the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking termination of arbitration proceedings was rejected by Arbitral Tribunal on the ground that once the High Court had appointed an arbitrator under the provisions of Section 11 of the Act, the Arbitral Tribunal had no jurisdiction to adjudicate on the limitation aspect for appointing such arbitrator. In furtherance, the petitioner prays for the issuance of a writ in the nature of certiorari terminating the entire arbitration proceedings pending before the Arbitral Tribunal.

FACTS

2. Factual matrix giving rise to this instant petition is delineated below:

a. The petitioner and Santosh Kumar Singh (hereinafter referred to as 'respondent no. 2') entered into a partnership deed dated September 13, 2013 to carry on business in the name of M/s. Arch Construction. Subsequently, an altercation arose between the petitioner and respondent no. 2 regarding payment in furtherance of work carried out for the Power Grid Corporation of India Limited. In this regard, the petitioner wrote a letter dated November 7, 2015, to ICICI bank informing it of the illegal operation of the account by the respondent no. 2, pursuant to which the aforesaid account in ICICI Bank bearing account no. 066605000653 was frozen by the

bank.

b. The petitioner alleges that thereafter respondent no.2 opened another account in the name of Arch Construction in Union Bank of India, Narai Bandh Branch, Mau bearing account no. 4338010042423, by forging the signature of his father, petitioner and Ajay Singh (hereinafter referred to as 'respondent no.4'). An application was also made before the Power Grid Corporation to release the payments for the work into the aforesaid account. The petitioner later discovered that the Power Grid Corporation of India Ltd. had made payment of the outstanding amounts into the accounts provided by respondent no.2.

c. Aggrieved by the aforesaid circumstances, the petitioner lodged an FIR No. 0620 of 2017 under Sections 406, 420, 467, 468, 471 and 506 of the Indian Penal Code, 1860 against respondent no.2. Subsequently, the Investigating Officer filed a charge-sheet against respondent no.2 under sections 420 and 406 of the Indian Penal Code, 1860 (corresponding to Section 318 and Section 316 of the Bharatiya Nyaya Sanhita, 2023 (BNS)). Pursuant thereto, respondent no.2 was arrested by the police.

d. Respondent no.2 had also issued security cheques of the due amounts to the petitioner, however, the same were dishonoured and as a result the petitioner filed a Complaint Case number 10531 of 2018 on December 17, 2018 before the Competent Court, Lucknow.

e. In the meantime, respondent no.2 sent a legal notice dated September 4, 2017 to the petitioner

invoking arbitration clause to which the petitioner replied vide letter dated September 10, 2017 advising respondent no. 2 to approach the High Court seeking appointment of an arbitrator for settlement of disputes through arbitration.

f. In pursuance thereof, respondent no.2 filed an arbitration application under Section 11 of the Act on May 31, 2023 before the High Court for the appointment of an arbitrator in which this Court vide order dated December 7, 2023 has ex-parte proposed respondent no.3 as the sole arbitrator.

g. Aggrieved by order dated December 7, 2023, the petitioner filed a recall application before the High Court and on the date of hearing, the petitioner's counsel was unavailable, therefore, the High Court rejected the recall application vide order dated July 11, 2025.

h. Upon receiving the consent of respondent no.3, the High Court allowed the arbitration application vide order dated August 5, 2025 whereby respondent no.3 was appointed as the sole arbitrator and arbitration proceedings commenced. During the course of the arbitration, the petitioner was granted time to file preliminary objections with regard to the maintainability of the arbitration proceedings.

i. Accordingly, the petitioner filed an application under Section 16 of the Act challenging the jurisdiction on the ground of limitation in filing the application under Section 11 of the Act for appointment of an arbitrator which was disposed of vide impugned order dated October 9, 2025 by the Arbitral Tribunal. The Arbitral Tribunal came to the

finding that he had no jurisdiction to decide the said issue of limitation since the High Court had referred the matter to arbitration and as such it was concluded that the High Court had already decided on the said issue of limitation.

j. Aggrieved by the aforesaid order passed by the respondent no.3 rejecting the application filed under Section 16 of the Act the petitioner has now approached this Court.

CONTENTIONS OF PETITIONER:

2. Sri Tejas Singh and Sri Aakched Nath appearing on behalf of petitioner have made the following submissions:

a. Since the appointment of an arbitrator under Section 11(6) of the Act by the High Court is not specifically barred by the Limitation Act, 1963 (hereinafter referred to as 'Act, 1963') the residuary provision namely Article 137 to Schedule I of the Act, 1963 applies which bars the initiation of proceedings in the court after the lapse of three years from the date on which the cause of action arises.

b. The cause of action arose on or before September 4, 2017, that is, from the date of invocation of arbitration by sending legal notice by respondent no. 2, and therefore the bar of limitation of three years commenced from that date.

c. Respondent no. 1 ought to have filed the application under Section 11 of the Act within the prescribed period of three years; however, the same was filed after approximately six years, rendering it highly time-barred.

Consequently, the substantive claims of the respondents are also barred by limitation.

d. Since both the application under Section 11 of the Act and the underlying claim are time-barred, the continuation of arbitration proceedings is illegal and unsustainable.

e. Under Section 16(2) of the Act a plea regarding the lack of jurisdiction of the Arbitral Tribunal may be raised even if a party has participated in the appointment of the arbitrator.

f. The learned sole arbitrator erred in rejecting the petitioner's application under Section 16 of the Act on the ground that, post appointment of the arbitrator by the High Court, the Tribunal has no jurisdiction to examine limitation aspects even though the Arbitral Tribunal is empowered to rule on its own jurisdiction under Section 16 of the Act including issue of limitation, which is a preliminary issue before proceeding to adjudicate the claim.

g. The issue of limitation involves mixed questions of facts and law, which cannot be conclusively determined by the High Court at the stage of proceeding under Section 11 of the Act.

h. Arbitral Tribunal, observed that the respondent's plea of a continuing cause of action lacks merit, yet rejected the petitioner's application solely on jurisdictional grounds. Hence the impugned order is self-contradictory.

i. The finding of the Arbitral Tribunal that it can

examine whether the claim is time-barred or not but cannot determine as to whether the application under Section 11 is time-barred or not is contrary to settled law and renders the impugned order illegal and perverse.

j. The High Court may exercise its writ jurisdiction against an order passed under Section 16 in cases where a party is left remediless or where bad faith/illegality is evident.

k. To buttress his argument counsel has placed reliance on the following cases:-

(i) **Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.**[1]

(ii) **Ajay Madhusudan Patel v. Jyotrindra S. Patel**[2]

(iii) **Arif Azim Co. Ltd. v. Aptech Ltd.**[3]

(iv) **BSNL v. Nortel Networks (India) (P) Ltd.**[4]

(v) **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.**[5]

(vi) **SBI General Insurance Co. Ltd. v. Krish Spg.**[6]

(vii) **Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.**[7]

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1 **reported in (2022) 1 SCC 75;**
2 **reported in (2025) 2 SCC 147;**
3 **reported in (2024) 5 SCC 313;**
4 **reported in (2021) 5 SCC 738;**
5 **reported in (2020) 14 SCC 643;**
6 **reported in (2024) 12 SCC 1;**
7 **reported in (2020) 2 SCC 455.**

CONTENTIONS OF RESPONDENTS:-

3. Sri Ritesh Kumar Srivastava and Sri Alok Kumar Singh appearing on behalf of the respondents have made the following submissions:

a. An order passed by the High Court under Section 11 of the Act appointing an arbitrator is a 'judicial order' having statutory finality under Section 11(7) of the Act. No appeal, including Letters Patent Appeal, lies against such an order and the only remedy against such an order is by way of a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court.

b. Post the 2015 amendment, brought in force on the recommendation of Law Commission Report No. 246, the scope of judicial intervention under Section 11 has been curtailed; however the nature of power exercised and the order passed by the High Court under Section 11 continues to remain a judicial function.

c. Law Commission Report No. 246 refers to the role of the High Court in appointing arbitrators as a form of 'judicial intervention'.

d. The order passed by the High Court appointing the arbitrator operates as *res judicata* between the parties and cannot be re-agitated or reviewed in subsequent proceedings.

e. The Arbitral Tribunal, being a creation of the High Court's order, cannot examine or sit in appeal over the validity of the High Court's judicial order, including on the issue of limitation.

f. Even assuming that the High Court passed the order under Section 11 of the Act without examining the issue of limitation, an order or decree passed beyond limitation is not a nullity and remains binding unless set aside by a Superior court. Since the order appointing the arbitrator has not been challenged before the Supreme Court, it has attained finality and remains legally valid.

g. Section 37 of the Act envisages remedy in the form of an appeal for a party aggrieved by an order accepting a plea that the arbitrator has no jurisdiction but a combined reading of Sections 16(5) and 16(6) of the Act enunciates that if a plea of lack of jurisdiction is rejected, the arbitral tribunal must continue with the proceedings and render an award, as the judicial interference at this stage is barred by Section 5 of the Act.

h. There are continuing breaches of contractual obligations hence, by virtue of Section 22 of the Act, 1963 the cause of action is continuous and the disputes remain alive.

i. The respondent has dissolved the partnership firm by notice, thereby, giving rise to fresh and subsisting disputes requiring adjudication. Post-dissolution, the respondent is entitled to seek rendition of accounts, examination of financial records, and winding up of the firm through arbitration. The cause of action for rendition of accounts has arisen during the pendency of arbitration and is intrinsically connected with the existing disputes.

j. It is in consonance with the objective of speedy and efficient dispute resolution that all disputes, including those that have subsequently arisen, be adjudicated by

the same arbitral tribunal.

k. In view of the statutory bar and scheme of the Act, the present petition challenging the order passed under Section 16 of the Act is not maintainable.

l. To buttress his arguments, counsel has placed reliance on the following cases:

(i) **S.B.P. & Co. vs Patel Engineering Ltd.**[8]

(ii) **Duro Felguera, S.A. v. Gangavaram Port Ltd.**[9]

(iii) **Ittyavira Mathai v. Varkey Varkey**[10].

ANALYSIS

4. After hearing the arguments canvassed by the learned counsel appearing on behalf of both the parties and scrutinizing the materials placed on record, the following issues arises for our consideration:

I. Whether the High Court under Article 226 of the Constitution of India exercising its writ jurisdiction can interfere in the interlocutory order passed by the sole arbitrator under Section 16 of the Act?

II. Whether the High Court before appointing the arbitrator under Section 11(6) of the Act is required to adjudicate on the jurisdictional issue of limitation?

III. Whether the Arbitral Tribunal erred in law by not adjudicating the preliminary objection as raised by the petitioner relating to its jurisdiction under Section 16 of

8 **reported in 2005 (8) SCC 618;**

9 **reported in (2017) 9 SCC 729;**

10 **reported in 1963 SCC OnLine SC 200.**

the Act on the aspect of limitation of the application filed under Section 11 of the Act before the High Court?

5. The petitioner contends that the impugned order passed by the Arbitral Tribunal is perverse and illegal as the Tribunal while disposing of the application filed under Section 16 of the Act observed that the preliminary issue with regard to limitation cannot be adjudicated by the Tribunal before proceeding with the arbitration proceeding as only the High Court has jurisdiction to decide on the limitation aspects before appointing the arbitrator and once the High Court has found the dispute as live and subsisting, has appointed arbitrator in furtherance of it, the issue of limitation for appointment of arbitrator cannot be further adjudicated upon by the Tribunal. Moreover, the observation by the Arbitral Tribunal that only the issue of limitation with respect to the claim is required to be adjudicated by the Tribunal is perverse.

6. Per contra, the learned counsel appearing on behalf of respondents contends that the order appointing the arbitrator, passed by the High Court under Section 11 of the Act is a final judicial order by virtue of Section 11(7) of the Act, and the only remedy against such an order lies before the Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution of India. The amendment of 2015, merely curtailed the scope of judicial intervention without altering the judicial nature of the order. Since the said order was never challenged before the Supreme Court, it has attained finality, operates as res judicata, and cannot be treated as a nullity merely on account of limitation. The

respondent further contends that since Sections 16(5) and 16(6) of the Act mandate that upon rejection of a jurisdictional plea, the Arbitral Tribunal shall continue with the proceedings and make an award, no judicial interference at this interlocutory stage is permissible under Section 5 of the Act, and the present writ petition is therefore not maintainable. Additionally, the respondent submits that the disputes are still live and subsisting by virtue of continuing contractual breaches attracting Section 22 of the Limitation Act, 1963. Moreover, since that the respondent has dissolved the partnership firm by notice dated December 18, 2025, gives rise to a fresh cause of action for rendition of accounts which has accrued during the pendency of the arbitration proceedings and which, in the interest of expeditious resolution, ought also to be adjudicated in the ongoing arbitration proceedings making it neither expedient nor legally permissible to terminate the pending arbitral proceedings.

7. One may keep in mind the fact that arbitration is one of the methods of alternative dispute resolution where parties themselves agree to refer their disputes to a neutral third party known as the arbitrator. The objective of arbitration is to provide speedy, efficient and binding resolution of disputes that have arisen between the parties with regard to their substantive obligations. Redfern and Hunter on International Arbitration encapsulated arbitration law succinctly as “it is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a pacemaker instead of stirrer-up of strife”. Arbitration acts as an elixir

to disputes.

8. The Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to the conciliation and for matters connected therewith or incidental thereto. It also brought orchestration to domestic as well as international commercial arbitration with the Model Law, the New York Convention and the Geneva Convention.

9. The Act replaced the pre-colonial as well as post-colonial laws such as Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law in 1985 to foster the development of a unified legal framework for fair and efficient settlement of disputes arising in international commercial arbitration. In pursuance, the General Assembly of the United Nations recommended all states to give due consideration to the Model Law in view of the desirability of achieving uniformity of the law in arbitration procedure and the specific needs of International Commercial arbitration practice.

10. The principle of arbitration autonomy is an indelible element of the burgeoning domain of arbitration law. Arbitral tribunals function in an autonomous way in the sense that they are constituted to give effect to the mutual intention of the parties to settle their disputes through a neutral and expert authority of their choice.

Section 9 of the Code of Civil Procedure, 1908 bars the jurisdiction of Court from trying suits of civil nature of which the cognizance is either expressly or impliedly barred. However, Section 5 of the Act has an overriding effect as it ousts the judicial intervention in arbitration matters except where it is provided. Section 28 of the Contract Act, 1872 makes an agreement void if it restricts a party to a contract absolutely from enforcing their rights under or in respect of any contract by way of usual legal proceedings, but exception 1 to Section 28 of the Contract Act, 1872 provides an exception allowing parties to an agreement for enforcing their rights by way of legal proceeding by referring to arbitration instead of litigating in regular courts. Furthermore, Section 19 of the Act also liberated the Arbitral Tribunal from the clutches of the procedure laid down in the Code of Civil Procedure Code, 1908 or the Evidence Act, 1872 thereby exhibiting the principle of judicial non interference and autonomy of Arbitral Tribunals.

11. A plethora of decisions have deliberated upon the scope of the intervention of the writ court with respect to the orders passed by the arbitral tribunal. The principle of minimal judicial interference denounces the writ court from intervening in the interlocutory order passed by an Arbitral Tribunal. Section 5 of the Act contains a non-obstante clause mandating that no judicial authority shall intervene in matters governed by Part I of the Act except where expressly provided. The Supreme Court in **Deep Industries Ltd. v. ONGC**[11] while dealing with an order of the High Court against the dismissal of

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11 **reported in (2020) 15 SCC 706;**

an application filed under Section 16 of the Act by arbitral tribunal has categorically observed that dismissal of Section 16 application by Tribunal cannot be interfered with unless there is patent illegality in the inherent jurisdiction exercised by the Tribunal.

12. However, the writ court can interfere with the order passed by the arbitrator under Section 16 of the Act when the perversity in the order stares on the face. The dictum enunciated with regard to the aforesaid principles find place in **Punjab State Power Corpn. Ltd. v. Emta Coal Ltd.**[12] The relevant paragraph of the judgment is delineated below:

> "4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face."

13. The Supreme Court in **Bhaven Construction** (Supra) laid down a two-pronged test for warranting interference by writ court under Article 226 of the Constitution of India. Firstly, one of the parties is left remediless under the statute; secondly, a clear 'bad faith' is shown by one of the parties. The relevant paragraph of the judgment is quoted hereinbelow:

> "18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p.

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12 **reported in (2020) 17 SCC 93.**

343, para 11)

> "11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."
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> (emphasis supplied)
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> It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient."

14. Drawing from **Punjab State Power Corporation Ltd**. (Supra) to **Bhaven Construction** (Supra) three conditions for warranting interference by writ court may be culled out: the party challenging the order is completely without remedy under the Arbitration Act; one of the parties has acted in clear bad faith; the

order of tribunal under Section 16 is completely perverse on its face meaning that the perversity is so manifest and so glaring that it stares the court on the face and requires immediate intervention to prevent a gross miscarriage of justice.

15. To answer the first issue one may look into the impugned order passed by the Arbitral Tribunal. The relevant part of the order is extracted hereinbelow:

> "..... In the case in hand the respondents are challenging the limitation to file application under Section 11 of the Act and not the limitation to file claim which is yet to be filed. The High Court while passing order on the petition under Section 11(6) on 7.12.23, observed that there are live and subsisting disputes between the parties, which means that the court was satisfied that the petition under Section 11(6) of the Act, was within time. Thus, there is no occasion for this tribunal to go into the same issue again. The issue of limitation to file claim, is well within the jurisdiction of this tribunal but so far as the limitation to file application under Section 11 of the Act is concerned, the same has become final when the High Court found that there was live and subsisting dispute between the parties.
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> I am therefore of the considered opinion that this tribunal while exercising jurisdiction under section 16 of the Act, cannot examine as to whether the High Court had jurisdiction under Section 11 to appoint arbitrator or not. However, this tribunal would be competent enough to see as to whether the claim referred by the claimants is within time and is maintainable. If this tribunal comes to the conclusion that the claim is barred by limitation, it would have no jurisdiction to proceed with the matter, that this can be done only after filing of the claim and objection by the respondents.
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> In the result the application of the respondents for terminating the arbitration proceedings on the ground of limitation to file application under Section 11 of the Act before the High Court, is rejected. However, it will be open for the respondents to raise

issue of limitation to file claim, when the same is filed by the claimants."

16. As per Section 16 of the Act, the Arbitral Tribunal has power to rule on its own jurisdiction. Section 16 of the Act is delineated below:

"**Section 16: Competence of arbitral tribunal to rule on its jurisdiction.**

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

17. In the aforesaid order Arbitral Tribunal has

abnegated to exercise jurisdiction under Section 16(2) of the Act on the ground that it does not have jurisdiction to decide with respect to the issue of limitation for filing application under Section 11(6) of the Act before the High Court on the reasoning that the above issue of limitation is the sole jurisdiction of the High Court which cannot be re-visited by the Tribunal.

18. The raison d'etre of the Tribunal cannot be countenanced in law as the same will make one of the parties to arbitration remediless as there is no remedy against the rejection order passed by the arbitrator under Section 16(5) of the Act and the party shall be left with no remedy but to wait till the passing of the final award and file an application for setting aside of the award under Section 34 of the Act.

19. The doctrine of competence-competence enshrined under Section 16 of the Act empowers an arbitral tribunal to rule on its own jurisdiction which makes it crystal clear that all the issues of jurisdiction which includes the issue of deciding its jurisdiction on the ground of limitation for appointing an arbitrator should be adjudicated upon by the Tribunal and the Tribunal cannot shrug off from its own jurisdiction merely with the reasoning that once the reference court has appointed an arbitrator, the jurisdiction of limitation for appointment of arbitrator has already been adjudicated upon which need not be reagitated during the arbitration proceedings as being barred by *res judicata*. One may look into the very recent judgment of the Supreme Court in **Interplay Between Arbitration Agreements under Arbitration**

Act, 1996 & Stamp Act, 1899, In re[13] wherein the Court has observed that Section 16 of the Act is intended to give effect to the doctrine of competence-competence. The relevant paragraphs of the judgment are quoted hereinbelow:

> "130. This position has now undergone a complete metamorphosis in the present legislation. Section 16 of the Arbitration Act, which is based on Article 16 of the Model Law, recognises the doctrine of competence-competence in Indian arbitration law.
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> 131. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings — courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence."
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> (Emphasis added)

20. Moreover, Section 16(2) of the Act does not preclude a party from raising any jurisdictional plea

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13 **reported in (2024) 6 SCC 1;**

merely because he has participated in the appointment of an arbitrator or he himself has appointed an arbitrator.

21. In our view, the reasoning of the arbitrator that once the High Court had referred the matter to the arbitrator, the Arbitral Tribunal cannot examine the jurisdictional issue with regard to application filed under Section 11 of the Act being time barred goes against the settled principles of law that even if the High Court referred the matter to arbitration, the Arbitral Tribunal under Section 16 of the Act had the power to decide on its own jurisdiction. The Arbitral Tribunal is the forum for deciding all issues that the parties may raise including the issues of limitation that may have not been raised by the parties at the time of order passed by the High Court under Section 11 of the Act. Keeping in mind Section 11(6-A) of the Act that is still operational, the duty of the High Court is restricted to examining the existence and validity of the arbitration agreement and nothing more. Even if the High Court refers the matter to the Arbitral Tribunal under Section 11 of the Act, the Tribunal has the power under Section 16 of the Act to hold that there is no valid and subsisting arbitration agreement. The issue of limitation being a jurisdictional point can be raised at any point. In the present case the jurisdictional point with regard to limitation vis-a-vis the time barred application under Section 11(6) of the Act was required to be adjudicated upon by the Tribunal. The logic of the Tribunal that since the matter has been referred by the High Court, the point of limitation cannot be re-looked into by the Tribunal is without any basis in law and against the principle of competence-competence as well

as the provisions of Section 16(2) and Section 16(3) of the Act.

22. Before finally deciding on the issue as to whether the writ court shall have jurisdiction to intervene in the present matter, one may look into a neoteric position of law as laid down in a three-judge bench judgment of the Supreme Court in **Ajay Madhusudan Patel** (Supra) wherein the Court has meticulously observed the transition brought into effect by the amendment of 2015 with the addition of Section 11(6-A) of the Act that limits the scope of reference court to decide the preliminary issue and leaves all issues open to be decided by the Arbitral Tribunal. The relevant paragraphs of the judgment are quoted hereinbelow:

> "76. The position of law that emerges from the aforesaid discussion can be summarised as follows:
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> 76.1.SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] expanded the scope of the Court's power under Section 11 while empowering the referral courts to decide several preliminary issues. Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] went to the extent of identifying three categories of preliminary issues that may arise for consideration in an application under Section 11. Of these, in the first category which had to be mandatorily decided by the referral court, the question whether there was an arbitration agreement and whether the party who has applied under Section 11 of the 1996 Act is a party to such an agreement, was also included.
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> 76.2. The insertion of Section 11(6-A) through the 2015 Amendment to the 1996 Act stipulated that the courts under Section 11 shall confine their examination to the "existence" of an arbitration agreement. It legislatively overruled the decisions in SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005)

8 SCC 618 : (2005) 128 Comp Cas 465] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] by virtue of its non obstante clause.

76.3.Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , in clear terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists — nothing more, nothing less.

76.4.Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] endorsed the prima facie test in examining the existence and validity of an arbitration agreement both under Sections 8 and 11, respectively. However, it was clarified that in cases of debatable and disputable facts and reasonably good arguable case, etc. the Court may refer the parties to arbitration since the Arbitral Tribunal has the authority to decide disputes including the question of jurisdiction. It was further stated that jurisdictional issues concerning whether certain parties are bound by a particular arbitration under the group-company doctrine, etc. in a multi-party arbitration raise complicated questions of fact which are best left to the tribunal to decide.

76.5. In Interplay, In re [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1] the position taken in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] was clarified to state that the scope of examination under Section 11(6) should be confined to the "existence of the arbitration agreement" under Section 7 of the 1996 Act and the "validity of an arbitration agreement" must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can "rule" on its own jurisdiction.

76.6.Krish Spg. [SBI General Insurance Co. Ltd. v.

> Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage.
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> 76.7.Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16."
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> 94. Once the Arbitral Tribunal is constituted, it shall be open for the respondents to raise all the available objections in law, and it is only after (and if) the preliminary objections are rejected that the tribunal shall proceed to adjudicate the claims of the petitioners."
>
> (Emphasis added)

23. The amendment of 2015, after insertion of 11(6-A) to the Act legislatively overruled the broadened position of law prevailing prior to 2015 amendment when the Court could also go into preliminary questions such as stale claims, accord and satisfaction having been reached amongst all others [see: (**SBP & Co.** (Supra) and

National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.[14]. Although the 2019 amendment to the Act omitted Section 11(6-A), the omission has not yet been notified, and therefore, Section 11(6-A) still remains as part of the Act and remains operative as on date. Ergo, the law laid down in **Duro Felguera** (Supra), **Vidya Drolia v. Durga Trading Corporation**[15], **Interplay, In Re** (Supra), **SBI General Insurance Co. Ltd. v. Krish Spg.**[16], **Cox & Kings Ltd. v. SAP India (P) Ltd.**[17] holds the field.

24. Although the Supreme Court in **Bhaven Construction** (Supra) has cautioned the writ court not to exercise discretion beyond the procedure established under the enactment, the Supreme Court in the same breath has stated that this power may be exercised in exceptional rarity. Combining this principle with the dictum enunciated in **Punjab State Power Corporation Ltd**. (Supra) that when an order is passed wherein there is a patent lack of inherent jurisdiction, the writ court may intervene. In our view, we are duty bound to examine whether the arbitrator while deciding an application under Section 16 of the Act had acted within its jurisdiction. When the arbitrator chooses to abrogate and abdicate his jurisdiction and comes to a wrong finding that he does not have jurisdiction to decide a particular point contrary to principles established in law, the arbitrator at such point is acting in a patently illegal manner. In the present case, the Arbitral Tribunal has in a crystal clear manner abdicated its responsibility to

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14 reported in (2009) 1 SCC 267;

15 reported in (2021) 2 SCC 1;

16 reported in (2024) 12 SCC 1;

17 reported in (2024) 4 SCC 1;

decide on its own jurisdiction that it is required to do under Section 16 of the Act. As pointed out in the judgment of **Ajay Madhusudan Patel** (Supra), once the Arbitral Tribunal is constituted, it shall be open for the respondents to raise all the available objections in law and it is only after the preliminary objections are rejected, that the Tribunal shall proceed to adjudicate the claims of the parties to arbitration. In the present case, the arbitrator has specifically held that he does not have power and/or jurisdiction to decide on a point of limitation. In our view, this abdication stares at our face and the perversity of the order compels us to intervene in the present matter.

25. With regard to the arguments of the respondent on the conjoint reading of Section 5 read with Section 16(5) and Section 16(6) of the Act, that mandates that once a decision has been taken rejecting the application under Section 16 of the Act, the only remedy left to the party is to wait for the arbitration award and thereafter challenge it by way of an application under Section 34 of the Act, is required to be dealt with by me. In our view, looking at first principles, it is clear that Section 16(2) of the Act categorically states that the Tribunal shall deal with the issue of jurisdiction and a party shall not be precluded from raising such a plea merely because that he has appointed or participated in the appointment of the arbitrator. Keeping in mind the principles laid down in **Ajay Madhusudan Patel** (Supra), it is clear that all issues including that of jurisdiction have to be ruled upon by the arbitrator himself. In fact, the judgement indicated above

clearly forbids the referral Court from going into the aspect of jurisdiction except with regard to the existence or validity of the arbitration agreement. All other points are clearly left for the arbitrator to decide as he has the power to rule on his own jurisdiction. Limitation being an arbitrable issue, the arbitrator is bound to decide the same as this issue is directly in relation to his jurisdiction.

26. Furthermore, the very fact that Sections 16(5) and 16(6) of the Act state that once the decision is taken with regard to rejecting the plea, the arbitrator is required to continue with the arbitration proceedings and make an award that can only be challenged by way of an application for setting aside of the award under Section 34 of the Act, makes it mandatory for the arbitrator to not be reticent and taciturn with regard to his own jurisdiction. It is upon the arbitrator to decide on its own jurisdiction that includes the issue of limitation. One has to keep in mind the fact that the principle of competence-competence requires the arbitrator to decide on its own jurisdiction and the principle of res judicata with regard to the referral Court do not come into play before the Arbitral Tribunal. In fact, the Courts have consistently held that it is the Arbitral Tribunal that decides on its own jurisdiction and not the referral Court.

27. In light of the above, we are of the view that the order of the Tribunal is patently illegal, perverse and the Tribunal has failed to exercise the inherent jurisdiction entrusted upon it. In light of the same, the first question is answered in the affirmative in the facts and circumstances of the case.

28. Proceeding to the second issue with regard to the scope of jurisdiction of the referral court in appointing an arbitrator, the *lex lata* subsequent to insertion of Section 11(6-A) to the Act, is that the Supreme Court or as the case maybe the High Court whilst considering any application under Section 11(4) to 11(6) is to confine itself to examination of existence of the arbitration agreement, nothing more, nothing less and leave all other preliminary issues including the issue with regard to limitation for appointment of an arbitrator to be decided by the Tribunal. Ergo, answering the second issue in the negative, we may reiterate the principle of autonomy and competence-competence that allows the Arbitral Tribunal to rule on its own jurisdiction by virtue of Section 16 of the Act and confines the jurisdiction of referral court under Section 11 of the Act for the appointment of arbitrator to the existence of a valid arbitration agreement. When the High Court does look into the issue of limitation and rejects the reference to arbitration, the aggrieved party may approach the Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution of India. Per Contra, when the High Court does not delve into the issue of limitation, the aggrieved party has two choices: either for filing a Special Leave Petition before the Supreme Court or filing an objection challenging the jurisdiction of the Arbitral Tribunal on the grounds of limitation under Section 16 of the Act before the Tribunal.

29. A cumulative dealing with the first two issues, will answer the third issue. One may look into a treasure-trove decision in the field of arbitration law by a seven-

judge Constitution Bench of the Supreme Court (coram: **Dr. D.Y. Chandrachud C.J**. and Sanjay Kishan Kaul, Sanjiv Khanna, B.R Gavai, Surya Kant, J.B. Pardiwala, and Manoj Misra, JJ.) in **Interplay, In Re** (Supra), wherein the court has reaffirmed that the legislative policy under Section 11(6) of the Act by the High Court is one of minimal judicial interference and maximum delegation of jurisdictional questions. The Court has observed that separability presumption contained in Section 16 of the Act gives effect to the doctrine of competence-competence allowing the Arbitral Tribunal to assume and decide on its own jurisdiction. The relevant paragraphs of the judgment are quoted hereinbelow:

> "120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the Arbitral Tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining

the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

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G. The doctrine of competence-competence

123. The doctrine of kompetenz-kompetenz (also known as competence-competence), as originally developed in Germany, was traditionally understood to imply that arbitrators are empowered to make a final ruling on their own jurisdiction, with no subsequent judicial review of the decision by any court. [Fouchard, Gaillard, Goldman on International Commercial Arbitration, Emmanuel Gaillard and John Savage (Eds.), (1999) 396.] However, many jurisdictions allow an Arbitral Tribunal to render a decision on its jurisdiction, subject to substantive judicial review. [Gary Born, International Arbitration Law and Practice (3rd Edn., 2021) 1143.]

124. It is a well-recognised principle of public international law that a legal authority possessing adjudicatory powers has the right to decide its own jurisdiction. [Interpretation of the Greco-Turkish Agreement of December 1st, 1926, In re, 1928 SCC OnLine PCIJ 5] Similarly, it is a general rule of international arbitration law that an Arbitral Tribunal has the power to determine its own jurisdiction. The ability of an Arbitral Tribunal to determine its own jurisdiction is an important facet of arbitration jurisprudence because it gives effect to the separability presumption. The separability presumption insulates the arbitration agreement from the defects of the underlying contract, and thereby ensures the sustenance of the tribunal's jurisdiction over the substantive rights and obligations of the parties under the underlying contract even after such a contract is put to an end. The doctrine of competence-competence allows the tribunal to decide on all substantive issues arising out of the underlying contract, including the existence and validity of the arbitration agreement.

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131. Section 16 empowers the Arbitral Tribunal to

rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings — courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence.

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153. The decisions of this Court 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] allowed for greater judicial interference at the pre-arbitral stage. In effect, the Referral Courts were encouraged to conduct mini trials instead of summarily dealing with the preliminary issues. This was also noted by the Law Commission of India, which observed that judicial intervention in the arbitral proceedings is a pervasive problem in India leading to significant delays in the arbitration process. [Law Commission of India, 246th Report (2014).] The Law Commission recognised that one of the problems plaguing implementation of the Arbitration Act was that Section 11 applications were kept pending for years by the Courts. To remedy the situation, the Law Commission proposed changing the then existing scheme of the power of appointment being vested in the “Chief Justice” to the “High Court” and the “Supreme Court”. It also clarified that the

power of appointment of arbitrators ought not to be regarded as a judicial act.

154. Significantly, the Law Commission observed that there was a need to reduce judicial intervention at the pre-arbitral stage, that is, prior to the constitution of the Arbitral Tribunal. Accordingly, it proposed limiting the scope of the judicial intervention at the referral stage under Sections 8 and 11 of the Arbitration Act "to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void". The Law Commission suggested insertion of sub-section (6-A) under Section 11 which would read:"Any appointment by the High Court or the person or institution designated by it under sub-section (4) or sub-section (5) or sub-section (6) shall not be made only if the High Court finds that the arbitration does not exist or is null and void." In light of the recommendations of the Law Commission, Parliament passed the Arbitration and Conciliation (Amendment) Act, 2015 ("the 2015 Amendment Act") to incorporate Section 11(6-A).

155. The Statement of Objects and Reasons of the 2015 Amendment Act states that sub-section (6-A) is inserted in Section 11 to provide that the Supreme Court or the High Court while considering application under sub-sections (4) to (6) "shall confine to the examination of an arbitration agreement". With the coming into force of the 2015 Amendment Act, the nature of preliminary examination at the referral stage under Section 11 was confined to the existence of an arbitration agreement. It also incorporates a non obstante clause which covers "any judgment, decree or order of any court". By virtue of the non obstante clause, Section 11(6-A) has set out a new position of law, which takes away the basis of the position laid down by the previous decisions of this Court 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] . It is also important to note that Parliament did not incorporate the expression "or is null and void" as was suggested by the Law Commission. This indicates that Parliament intended to confine the

jurisdiction of the Courts at the pre-arbitral stage to as minimum a level as possible.

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167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]

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229. The discussion in preceding segments indicates that the Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal. When a party produces an arbitration agreement or its certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/ instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] , as reiterated in N.N. Global (2) [N.N. Global

> Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] , is no longer valid in law."

30. In the present case, the arbitrator has declined to decide the preliminary objection of limitation, not rejected the same on merits but has relinquished the very jurisdiction to decide it. For the sake of clarity, the relevant part of the order passed by the arbitrator is once again extracted below for the sake of clarity:

> "The Hon'ble Supreme Court has held in the case of The Uttarakhand Purv Sainik Kalyan Nigam Ltd. Vs. Northern Coal Field Ltd. (Manu/SC/1634/2019) that in the proceedings under Section 11 of the Act, the court is only required to see the existence of arbitration clause in the agreement, the parties to the agreement and that one of the parties has refused to appoint arbitrator. No other issue such as validity of the agreement, limitation etc. are to be seen by the arbitrator and not by the court at pre-reference stage.
>
> In the case referred to above, the High Court had refused to appoint arbitrator on the ground that the claim was barred by limitation. The Supreme Court held that after the amendment in Section 11 of the Act, this power can be exercised by the tribunal only and not by the High Court in the proceedings under Section 11 of the Act.
>
> Thus, from analysis of the position of law on the issue, I am of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, the court should satisfy on two aspects, first whether the petition under Section 11(6) of the Act, is barred by limitation, and secondly whether the claim sought to be arbitrated, is dead claim and thus barred by limitation on the date of commencement of proceedings.
>
> In the case in hand the respondents are challenging the limitation to file application under Section 11 of the Act and not the limitation to file claim which is yet to be filed. The High Court while passing order

> on the petition under Section 11(6) on 7.12.23, observed that there are live and subsisting disputes between the parties, which means that the court was satisfied that the petition under Section 11(6) of the Act, was within time. Thus, there is no occasion for this tribunal to go into the same issue again. The issue of limitation to file claim, is well within the jurisdiction of this tribunal but so far as the limitation to file application under Section 11 of the Act is concerned, the same has become final when the High Court found that there was live and subsisting dispute between the parties.
>
> I am therefore of the considered opinion that this tribunal while exercising jurisdiction under section 16 of the Act, cannot examine as to whether the High Court had jurisdiction under Section 11 to appoint arbitrator or not. However, this tribunal would be competent enough to see as to whether the claim referred by the claimants is within time and is maintainable. If this tribunal comes to the conclusion that the claim is barred by limitation, it would have no jurisdiction to proceed with the matter, that this can be done only after filing of the claim and objection by the respondents.
>
> In the result the application of the respondents for terminating the arbitration proceedings on the ground of limitation to file application under Section 11 of the Act before the High Court, is rejected. However, it will be open for the respondents to raise issue of limitation to file claim, when the same is filed by the claimants."

31. The Arbitral Tribunal has accepted that limitation is a jurisdictional issue within its domain and recorded that the continuing cause of action of the respondent has no force but has still refused to decide the point of limitation on a perfunctory whim that he has no jurisdiction. An order that records a legal position, accepts it, and then acts contrary to it without any reasoning is inherently contradictory and completely perverse on the face of the record. The relevant part of the order that substantiates the aforesaid analysis is

quoted hereinbelow for the sake of clarity:

> "The judgments of the Supreme Court also make it clear that the period of limitation to file an application under Section 11, is 3 years from the date of refusal to appoint the arbitrator or from the date when cause of action arises, in view of this, the argument of the claimants that the cause of action is still continuing, has no force, but at the same time this tribunal while exercising power under Section 16 of the Act, can examine as to whether the claim of the claimants is within time but so far as the jurisdiction of the High Court to entertain application under section 11 of the Act is concerned, this Tribunal cannot examine as to whether the High Court had jurisdiction to entertain the application under section 11 of the Act. The respondents had every occasion to appear before the high court and file objection as to the limitation to file application under section 11 of the Act for appointment of arbitrator but on both the occasions, the respondents failed to appear and oppose the application on the ground of limitation."

32. In light of the principles laid down in **Interplay, In Re** (Supra) and **Ajay Madhusudan Patel (Supra)**, we are of the considered view that the Tribunal has erred in law in declining to adjudicate on the jurisdictional issue of limitation for appointing the arbitrator in spite of being duty bound and obligated to decide on its own jurisdiction.

CONCLUSION

33. Upon sifting through a catena of judgments of the Supreme Court and applying the said dictum to the present case, we are of the considered view that the present case is one of the rarest cases warranting interference by writ court in light of the findings given above.

34. The power of the High Court being a reference

court under Section 11 of the Act is of minimal interference and maximum delegation and the jurisdiction of the High Court in appointing an arbitrator under Section 11 is confined to examination of arbitration clause in the agreement and the Court at this stage should not get lost in thickets and decide disputed and mixed questions of fact such as the limitation for appointing the arbitrator. Moreover, as per P. Ramanatha Aiyar, The Law Lexicon [(2nd Edn., 1997) 666] the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A 'ruling' connotes adjudication of disputes after admitting evidence from the parties. Ergo, it is evident that the referral court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the limitation for appointment of an arbitrator under Section 11 of the Act and the Tribunal has erred in law in declining to adjudicate on the jurisdictional issue of limitation for appointing arbitrator under Section 16 despite having the competence and jurisdiction to rule on the same.

35. In light of the above, the impugned order dated October 9, 2025 passed by the Arbitral Tribunal rejecting the petitioner's application under Section 16 of the Act, is hereby quashed and set aside.

36. The Arbitral Tribunal is directed to adjudicate upon the issue relating to limitation for appointment of

arbitrator under Section 11(6) of the Act as a preliminary objection under Section 16 of the Act, on merits after granting an opportunity of hearing to the parties, in accordance with law.

37. The Arbitral Tribunal shall decide the said preliminary objections expeditiously.

38. It is clarified that this Court has expressed no opinion on the merits of the limitation issue, and all the contentions of both parties are left open to be raised and decided before the Arbitral Tribunal.

39. The writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

40. I would like to acknowledge the consummate arguments made by counsel appearing on behalf of both the parties and for the diligent spadework in preparation of the notes of arguments. I would also go amiss if I did not acknowledge the significant contribution and appreciate my Research Associate Ms. Saumya Patel for her in-depth research and assistance provided to me.

April 27, 2026
Ashutosh/ cks/-

(Shekhar B. Saraf, J.)

I agree

(Abdhesh Kumar Chaudhary, J.)