

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 22.04.2026

Pronounced on: 30.04.2026

Uploaded on: 30.04.2026

*Whether the operative part or full
judgment is pronounced: **Full***

**CM No.8828/2025 in AA No.23/2017
CM No.2807/2024
c/w
CM(M) No.130/2024 CM No.2341/2024**

M & COMPANY ENGINEERS AND CONTRACTORS

...PETITIONER(S)/APPELLANT

*Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. S. N. Ratanpuri, Advocate.*

Vs.

J&K ECONOMIC RECONSTRUCTION AGENCY & OTHERS

...RESPONDENT(S)

Through: - Mr. Ilyas Nazir Laway, GA.

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

JUDGMENT

1) By this common order, application of M& Company Engineers & Contractors Pvt. Ltd. (CM No.8828/2025) seeking vacation of order dated 26.04.2024 passed in CMP No.2341/2024 arising out of CM(M) No.130/2024 and order dated 17.05.2024 passed in CM No.2807/2024 arising out of AA No.23/2017, and CM(M) No.130/2024 are proposed to be disposed of.

2) The facts leading to the filing of the present application are that disputes and differences arose between contractor

M/S M & Company Engineers and Contractors Pvt. Ltd. on the one hand and J&K Economic Reconstruction Agency (J&K ERA) on the other. After invocation of the arbitration clause, contractor nominated Er. Qazi Nazir Ahamd, retired Chief Engineer, as its Arbitrator whereas J&K ERA nominated Mr. Ghulam Mohammad Dar, retired Chief Engineer, PHE, Srinagar, Kashmir, as its Arbitrator.

3) It appears that on the directions of this Court passed on 12.02.2011, the Presiding Arbitrator was appointed. Thereafter arbitration appeal bearing AA No.23/2017 came to be filed before this Court when the Presiding Officer withdrew and reconstitution of Arbitral Tribunal was sought. Vide order dated 12.09.2022 passed in the aforesaid petition, a direction was issued that the nominated Arbitrator shall appoint third Arbitrator who shall act as a Presiding Arbitrator to resolve the disputes between the parties.

4) Ultimately, AA No.23/2017 was disposed of vide order dated 10.10.2022, by providing that the Arbitrators named by the parties shall be free to appoint Presiding Arbitrator in accordance with law for constituting the Arbitral Tribunal.

5) It seems that the Arbitral Tribunal entered into reference on 16.11.2022 and when J&K ERA made an application before the Arbitral Tribunal submitting therein that mandate of the

Arbitral Tribunal had terminated as the time limit for concluding the arbitral proceedings had not been extended either by the parties or by the Court, the said application came to be dismissed by the Arbitral Tribunal in terms of order dated 20.04.2024 and the J&K ERA was directed to cross-examine the witnesses of the claimant/contractor for which next date was fixed on 30.04.2024.

6) The aforesaid order came to be challenged by the J&K ERA by way of a petition under Article 227 of the Constitution which was registered as CM(M) No.130/2024. The main ground for challenging the impugned order passed by the Arbitral Tribunal is that mandate of the said Tribunal had expired on 16.11.2023 in terms of the provisions contained in Section 29A of the Arbitration and Conciliation, 1996, therefore, it was not open to the Arbitral Tribunal to hold further proceedings. It was also contended that though the Arbitral Tribunal comprises of three Arbitrators, yet the proceedings are being conducted only by two Arbitrators thereby rendering the proceedings Coram-Non-Juris.

7) Vide order dated 26.04.2024 passed in the aforesaid petition (CM(M) No.130/2024), it was directed that the Tribunal shall not record any evidence in the matter unless all the Arbitrators participate in the proceedings.

8) An application bearing CM No.2807/2024 came to be filed by J&K ERA in disposed of AA No.23/2017 seeking stay of proceedings pending before the Arbitral Tribunal. This Court, while issuing notice on the said application, vide its interim order dated 17.05.2024 directed the Arbitrators not to proceed with the arbitration proceedings.

9) In the meantime, the Arbitral Tribunal filed an application bearing CM No.2454/2024 seeking extension of time till November 16, 2024. The said application came to be rejected by this in terms of order dated 30.09.2025. The said application was tagged by the Registry with CM(M) No.130/2024.

10) The contractor M/S M and Company filed two more applications bearing CM No.6932/2025 and CM No.6781/2025 in disposed of AA No.23/2017. Vide CM No.6932/2025, the contractor sought recall of order dated 30.09.2025 whereby application of the Arbitrators seeking extension of time was dismissed and vide CM No.6781/2025, the contractor sought extension of time in favour of the Arbitral Tribunal so as to enable it to conclude the arbitral proceedings and to pass an award. Both these applications came to be disposed of by this Court in terms of composite order dated 09.12.2025. Vide the said order, order dated 30.09.2025 passed in CM No.2454/2024 has been recalled and while

allowing the application filed by the contractor seeking extension of timeline for making the award by the Arbitrators, the time period for making award has been extended for a period of three months commencing from 9th December, 2025. It has been further provided that the proceedings shall be deemed to be continuing from the point where it had stopped on the date of dismissal of the application on 29.09.2025.

11) The contractor has filed CM No.8828/2025 seeking vacation of orders dated 26.04.2024 and 17.05.2024, contending that the J&K ERA has refused to participate in the proceedings even after extension of term of Arbitral Tribunal because order dated 17.05.2024, whereby proceedings before the Arbitral Tribunal were stayed, continues to be in force. Therefore, the said order is required to be recalled.

12) J&K ERA has contested the application by filing its reply. In the reply it has been submitted that mandate of the Arbitrators has expired in the year 2023 and, as such, the proceedings before the Arbitral Tribunal cannot continue. The J&K ERA has sought termination of arbitral proceedings on the grounds mentioned in CM(M) No.130/2024

13) I have heard counsel for the parties and perused record of the case.

14) If we have a look at order dated 09.12.2025 passed by this Court while dealing with CM Nos.6932/2025 and

6781/2025, it becomes clear that the Court has, while dealing with the application seeking recall of order dated 30.09.2025, whereby application of the Arbitrators seeking extension of time has been dismissed, also taken up application of the contractor for extension of time in making of award by the Arbitral Tribunal and extended the time period by three months commencing from the date of the said order. The Court has taken note of the order of stay of proceedings before the Arbitral Tribunal granted by this Court in terms of order dated 17.05.2024 and has observed that the objection raised by the J&K ERA in this regard does not carry any weight because the stay order has been granted by the Court only to facilitate disposal of the application for extension of time. Thus, it is not a case where this Court was not cognizant of the order of stay of proceedings before the Arbitral Tribunal but it is a case where in spite of the said stay order, this Court proceeded to extend the mandate of the Arbitral Tribunal by three months with effect from 09.12.2025. It seems that due to inadvertence, the Court did not deal with the issue relating to vacation of stay granted on 17.05.2024 which has complicated the matter, inasmuch the J&K ERA refused to participate in the proceedings before the Arbitral Tribunal, justifiably so because the order of stay was subsisting.

15) The main contention that has been raised by learned counsel appearing for the the J&K ERA is that mandate of Arbitrators has expired in November, 2023 and without there being extension of the mandate of the Tribunal beyond the said period during the interregnum, the arbitral proceedings cannot go ahead.

16) The aforesaid contention raised by learned counsel for the J&K ERA is without any substance. The issue has been dealt with by the Supreme Court in the case of **Rohan Builders (India) Private Limited vs. Berger Paints India Limited**, (2025) 10 SCC 802. In the said case, the Supreme Court has held that under Section 29A of the Arbitration and Conciliation Act, the Court has power to extend time for making award even after the stipulated time period for making the award has already expired. While interpreting Section 29A(4) of the Arbitration and Conciliation Act, the Supreme Court held as under:

6. Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen17 months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months or eighteen months, as the case may be. The expression "either prior to or after the expiry of the period so specified" is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under sub-section (1) or the

extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period.

7. Section 29A(5) states that a party to the arbitration proceedings can file an application in court for an extension of time for making the award. As per the second proviso to Section 29A(4), where an application for an extension of time under Section 29A(5) has been filed and is pending, the mandate of the arbitral tribunal shall continue till the disposal of the application. Thus, the second proviso to Section 29A(4), by specific mandate, allows the arbitration proceedings to continue during the pendency of the extension application under Section 29A(5) before the court. Lastly, the extension of time is to be granted by the court only for 'sufficient cause' and on such terms and conditions as may be imposed by the court. We will elaborate on the last aspect, and why this interpretation is preferable. First, we will refer to the ratio and reasoning in Rohan Builders (India) Pvt. Ltd. (supra).

8. The core of the ratio and reasoning of Rohan Builders (India) Pvt. Ltd. (supra) is based on the use of the expression "terminate" in Section 29A(4). The judgment relies on the recommendations made by the 176th Report of the Law Commission of India, which had suggested using the term "suspend". Juxtaposing the words "terminate" and "suspend", it is noted that the use of the expression "terminate" reflects the legislative intent of terminating the mandate of the arbitral tribunal upon the expiry of the specified period. Therefore, the reasoning observes that on the termination of the mandate, the arbitral tribunal becomes de jure incapable of performing its function. Along the same lines, it is argued before us that, as a sequitur, and in view of Sections 14, 15, 29A and 32 of the A & C Act, a party must file an application for an extension of time to make an arbitral award before the culmination of the initial twelve-month period or the extended six-month period.

9. In our opinion, the aforesaid reasoning is fallacious and unacceptable. Language serves as a means to express thoughts and intentions.¹⁸ Words can have various meanings and connotations; thus, an interpretive exercise must be conducted with careful consideration of both the text and the context of the provision. Therefore, sometimes the court eschews a literal construction if it produces manifest absurdity or unjust results.

10. The word "terminate" in Section 29A(4) has to be read in the context of the said provision.²⁰ It should not be read as an isolated word with a strict dictionary meaning, but rather in conjunction with the surrounding words and expressions

which warrant recognition and consideration. This evinces the legislative intent. Secondly, the legislative preference for the term “terminate” over “suspend” is apparent, since the word “suspend” could cause incongruity and a legal conundrum if no party files an application for an extension of time. In such a scenario, the arbitral proceedings would stand suspended *ad infinitum*. Therefore, the legislature by using the word “terminate” intends to affirm the principle of party autonomy. Resultantly, if neither party moves an application for an extension of time for making the award, the arbitration proceedings are terminated. Consequences follow. Clearly, the use of the word “suspension” would have led to infeasible ramifications.

11. The word “terminate” in Section 29A(4) makes the arbitral tribunal *functus officio*, but not in absolute terms. The true purport of the word “terminate” must be understood in light of the syntax of the provision. The absence of a full stop after the word “terminate” is noteworthy. The word “terminate” is followed by the connecting word “unless”, which qualifies the first part with the subsequent limb of the section, i.e. “unless the court has, either prior to or after the expiry of the period so specified, extended the period.” The expression “prior to or after the expiry of the period so specified” has to be understood with reference to the power of the court to grant an extension of time.

12. Accordingly, the termination of the arbitral mandate is conditional upon the non-filing of an extension application and cannot be treated as termination *stricto sensu*. The word “terminate” in the contextual form does not reflect termination as if the proceedings have come to a legal and final end, and cannot continue even on filing of an application for extension of time. Therefore, termination under Section 29A(4) is not set in stone or absolutistic in character.

17) From the foregoing analysis of the legal position, it is clear that expiry of stipulated time period for making award only makes the Arbitral Tribunal *functus officio* but not in absolute terms. It is clear that termination of arbitral mandate is conditional upon the non-filing of an application and if, after the expiry of stipulated time for making the award, an application is made for extension of time for making the award

by any of the parties, the mandate of the Arbitral Tribunal would not terminate in a case where the Court grants such application. It has been made clear by the Supreme Court in the aforesaid judgment that the application for extension of time can be filed even after expiry of the period in terms of sub-section (1) and (3) of Section 29A and despite sub-section (4) providing for termination of mandate of Arbitral Tribunal on expiry of the period, a party has option to move an application before the Court for further extension. Therefore, the contention of learned counsel appearing for the J&K ERA that mandate of Arbitral Tribunal had terminated because none of the parties had approached the Court for extension of time in making of award by the time mandate of the Arbitral Tribunal had already expiry, is without any substance.

18) Having held as above, the fact that this Court vide order dated 09.12.2025 has already allowed application of the contractor seeking extension of time in making the award, there is no need to again go into the issue as to whether there are sufficient grounds for extending the time period for making the award because the said order has attained finality.

19) That takes us to the contentions raised in the petition under Article 227 of the Constitution wherein J&K ERA has laid challenge to order dated 20.04.2024 passed by the Arbitral Tribunal, whereby application of the J&K ERA seeking

termination of mandate of the Arbitrators has been rejected. Since the application of the contractor seeking extension of time in making the award has already been allowed by this Court, therefore, the petition under Article 227 of the Constitution laying challenge to order dated 20.04.2024 of the Arbitral Tribunal has been rendered infructuous, inasmuch as the time period for making award stands already extended. This Court has recorded that the learned Arbitral Tribunal should not have proceeded in the matter once the time period for making the award had expired on 16.11.2023, therefore, it would have been in the fitness of things for the learned Arbitral Tribunal to wait for the parties to approach the Court for extension of time in making the arbitral award and the decision thereon from this Court. However, having regard to the subsequent order passed by this Court on 09.12.2025, the petition (CM(M) No.130/2024) has been rendered infructuous.

20) So far as order dated 17.05.2024 passed by this Court, whereby proceedings before the Arbitral Tribunal were stayed, is concerned, it has been rightly noted by this Court in its order dated 09.12.2025 that the said order was passed by this Court with a view to prevent the Arbitral Tribunal from proceeding ahead without there being an order for extension of time in making the award. Once the time for making the award has been extended by this Court in terms of order dated

09.12.2025, the stay of proceedings of the Arbitral Tribunal is not warranted. Therefore, order dated 17.05.2024 deserves to be vacated.

21) Accordingly, while disposing of CM(M) No.130/2024 as having been rendered infructuous, order dated 17.05.2024 passed by this Court is vacated. It is further provided that the period of three months commencing from 9th December, 2025 for making the award as provided in order dated 09.12.2025 shall now commence from today.

**(Sanjay Dhar)
Judge**

SRINAGAR
30.04.2026
"Bhat Altaf-Szeg"

Whether the **judgment** is reportable: **YES/NO**

