



2026:AHC-LKO:59000

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CIVIL MISC. ARBITRATION APPLICATION No. - 56 of 2025

M/S S. H. Infratech Pvt. Ltd.
Thru. M.D. Mrs. Rabia
Khatoon

.....Petitioners(s)

Versus

Govt. Of U.P. Thru. Chief
Engineer, National Highways
And Ors.

.....Respondents(s)

Counsel for Petitioners(s)	: Apoorv Dev, Prashant Kumar Singh
Counsel for Respondent(s)	: Ambrish Rai

Reserved on 03.08.2026

Delivered on 20.08.2026

Court No. 8-

HON'BLE JASPREET SINGH, J.

1. Heard Sri Apoorva Dev, learned counsel for the petitioner and the learned Standing Counsel for the State-respondents.
2. The instant petition has been preferred by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act of 1996') seeking appointment of an independent Sole Arbitrator.
3. The facts giving rise to the instant petition are being noticed hereinafter:-
4. That the State-respondents had invited tenders for construction of a paved shoulder including strengthening from Km. 90 to 100.800 of

N.H.-96 (New N.H. 330) in State of Uttar Pradesh vide tender dated 20.01.2014. The bid of the petitioner was found favourable and the petitioner was granted the contract.

5. The contract contained an arbitration clause in terms whereof each of the contesting parties had a right to appoint their own party-nominated arbitrator and the two party-named nominated arbitrators would appoint a Presiding Arbitrator.

6. The undisputed fact would reveal that certain disputes had occurred between the petitioner and the respondent and the petitioner had invoked the Arbitration Clause. The petitioner had appointed Sri V.K. Shrotia as its party-nominated Arbitrator whereas the respondent had appointed Sri Arvind Kumar Gupta as their party-nominated Arbitrator and Sri Vijay Singh Verma was appointed as the Presiding Arbitrator.

7. The record indicates that the petitioner had furnished its statement of claim before the said Arbitral Tribunal and in response, the respondents have also filed furnished its statement of defence containing counter claims.

8. At this stage, the party-nominated arbitrator on behalf of the respondents namely Sri Arvind Kumar Gupta expired. The Presiding Arbitrator informed the respective parties of the demise of the respondents' party-nominated Arbitrator. At this stage, it is the claim of the petitioner that it requested the respondents to supplant the vacancy of the respondents' party-nominated Arbitrator.

9. The record further indicates that on 25.11.2024, the respondents supplanted the vacancy by appointing Sri Dilip Kumar Mahapatra as its

party-nominated Arbitrator. The petitioner upon receiving the said information vide its notice dated 13.12.2024 raised a contention with the respondents that since the time available with the Arbitral Tribunal to complete the proceedings in terms of Section 29-A of the Act of 1996, had expired and the mandate of the Arbitral Tribunal had been terminated. Furthermore, the respondents-party-nominated Arbitrator had expired and within a reasonable time, the vacancy was not supplanted as well as for the reason that the appointment of Sri Dilip Kumar Mahapatra was hit by Section 12(5) of the Act of 1996, hence, there was no Arbitral Tribunal functioning and in such circumstances the petitioner required the respondents to give consent for appointment of a Sole Arbitrator and for the aforesaid purpose also suggested the names of four persons.

10. The respondents did not agree with the contention of the petitioner and vide its reply dated 19.04.2025 declined the same which prompted the petitioner to file the instant petition.

11. The record would indicate that upon the aforesaid petition, notices were issued to the respondents, however, despite time being granted no counter affidavit was filed by the respondents.

12. In the aforesaid factual backdrop, the counsel for the petitioner submitted that the Arbitral Tribunal was constituted in the year 2020 and the pleadings also stood exchanged in 2020 itself. The party-nominated arbitrator of the respondents expired on 30.05.2021 and since the respondent did not supplant the vacancy within the reasonable time, hence, by operation of law, the time prescribed for completing the

Arbitral Proceedings expired as provided in Section 29-A of the Act of 1996.

13. Admittedly, none of the parties extended the time and the Mandate having been terminated, it was a fit case for appointment of a Sole Arbitrator in terms of Section 15(2) of the Act of 1996.

14. The learned counsel for the petitioner further urged that after the death of the respondent's party-nominated Arbitrator, despite notice and knowledge, it did not supplant the vacancy and despite several requests having been made which were ignored by the respondents, hence, they did not have the right to supplant the vacancy by appointing Sri Mahapatra who being a retired employee of the respondents, his appointment would be hit in terms of Section 12(1) & (5) of the Act of 1996 and in such circumstances, it would be in the fitness of things if this Court appointed a Sole independent Arbitrator.

15. It was thus urged that in the aforesaid given circumstances, the petition deserves to be allowed and in support of his submissions, he has relied upon the decision of the Apex Court in the case of **Haryana Space Application Center v. Pan India Consultants Pvt. Ltd. : AIR 2021 SC 653** and a Division Bench decision of this Court in **Laxmi Kant Pandey v. Hindustan Petroleum Corporation Ltd.: 2026: AHC:LKO-29090-DB : 2026 SCC OnLine All 3139**.

16. The learned counsel for the State-respondents though did not file any written objections but submitted that the instant petition is misconceived, inasmuch as, the provisions of Section 11(6) are not attracted in the given case. It was urged that Section 14 and 15 of the Act of 1996

operate in a different sphere and even Section 29-A also has applicability in a different fact situation.

17. It was further urged that the petitioner has merged two separate cause of actions which cannot be done and the petition being misconceived deserves to be dismissed.

18. The Court has heard the learned counsel for the parties and also perused the material on record including the brief submissions provided by the petitioner.

19. Before dealing with the contentions of the respective parties, it will be appropriate to notice certain admitted and relevant facts.

20. As far as the grant of contract to the petitioner is concerned, there is no dispute. It is also not disputed that the party had envisaged that in case of any dispute, they would refer the same for Arbitration.

21. It is also not disputed that upon emergence of disputes the parties had referred the disputes to an Arbitral Tribunal comprising of Sri Vijay Singh Verma (Presiding Arbitrator), Sri V.K. Shrotia (party-nominated Arbitrator of the petitioner) and Sri Arvind Kumar Gupta (party nominated Arbitrator of the respondents). It is also not disputed that Sri Arvind Kumar Gupta expired on 30.05.2021.

22. Another fact which is undisputed is that the Presiding Arbitrator had informed both the parties of the death of Sri Arvind Kumar Gupta. It is also to be seen from the record that post the notice given by the Presiding Arbitrator dated 02.06.2021, none of the parties took any active steps for completing the quorum of the Arbitral Tribunal.

23. From the perusal of the mail dated 02.06.2021, a copy of which has been brought on record as Annexure-11 would indicate that the Presiding Arbitrator had required the petitioner to submit its rejoinder to the Statement of Defence containing counter claims.

24. From the record, it appears that the respondent supplanted the vacancy of their party-nominated Arbitrator vide letter dated 25.11.2024. There is nothing on record to indicate that what transpired between the parties or before the Arbitral Tribunal post the mail issued by the Presiding Arbitrator dated 02.06.2021. Thus, there is no material brought on record to indicate that what transpired between 02.06.2021 till 25.11.2024 i.e. for about more than 3 years.

25. The record further indicates that only after having received the information regarding appointment of Sri Dilip Kumar Mahapatra as respondents' nominated Arbitrator, did the petitioner send a notice to the respondents on 13.12.2024, a copy of which is on record as Annexure-14.

26. In this aforesaid factual backdrop, it would reveal that as far as the Arbitration Clause is concerned which is at running page 62 of the paper-book and referable to Clause 25 of the Agreement, it would indicate that the contract envisaged a 3 member Tribunal, one to be appointed by the each of the parties and the two party-nominated Arbitrators would appoint the third. It is not disputed that a 3 Member Arbitral Tribunal came to be constituted, however, there is nothing on record to indicate when did the first sitting of the Arbitral Tribunal took place.

27. Be that as it may, it is an undisputed fact that the statement of claim and the statement of defence had been exchanged between the parties and it is also undisputed that after the death of the respondents' party-nominated Arbitrator in the month of May, 2021, no further proceedings took place nor any of the parties attempted to comply with their own obligations.

28. In the given circumstances and the facts noticed hereinabove, it would reveal that as per the parties, the Arbitral Tribunal consisted of 3 Members. Even if the party-nominated Arbitrator of the respondent expired, it was the duty of the respondents to have supplanted the said vacancy. If at all, the respondents did not comply with its obligations and the petitioner had any urgency in the matter, it could have put the respondents to notice and despite the notice if the respondents failed to comply with its obligations, it was open for the petitioner to have invoked the jurisdiction of this Court in terms of Section 11(4) of the Act of 1996.

29. It is also to be noticed that in terms of Section 29-A of the Act of 1996 the Arbitral Tribunal is required to complete the proceedings within a year from the date, the pleadings are complete. In case if it is not so done, it is open for the parties to extend the mandate of the Tribunal by another 6 months failing which it is to be done with the intervention of the Court and any of the parties can move the Court for doing so.

30. Section 29-A is a complete procedure in itself and for the sake of better appreciation, it would be appropriate to reproduce the same:-

“29A. Time limit for arbitral award.-(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation. --For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or

all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

31. Having taken note of the aforesaid Section, it would reveal that this Section comes into the picture, once a Tribunal has been constituted, however, it is unable to conclude the proceedings within the time so granted by the Act of 1996.

32. On the other hand, Sections 13, 14 and 15 of the Act of 1996 are relatable to a different fact situation. In the instant case, the submission and the pleading of the petitioner appears to be that since Mr. Mahapatra who was the party-nominated Arbitrator of the respondents was a retired employee of the respondents, hence, his appointment would be hit by Section 12(1) and (5) of the Act of 1996. Coupled with the fact that the mandate of the 3 Member Tribunal had expired, hence, a Sole independent Arbitrator be appointed by the Court.

33. This submission is misconceived for more than one reasons:

(a) If the petitioner did not raise any objection regarding the party-nominated Arbitrator of the respondents in the first instance, he could not raise such an objection at a later stage. Even if he could then that would amount to a challenge to the Arbitrator and covered by Section 12 and 13 of the Act of 1996. Admittedly, no such procedure has been adopted by the petitioner. In cases where each party is required to appoint its party-nominated Arbitrator, each party has its freedom and independence to appoint any person of its choice. If the respondent had appointed Sri Mahapatra, *per se*, the petitioner would have no right to object since its a multi-member Tribunal. Even if at all, there was any grievance, then the challenge could have been made only in terms of Section 12 and 13 of the Act of 1996.

(b) There is no consensus between the parties regarding a Sole Arbitrator, hence, filing a petition before this Court in terms of 11(6) of the Act of 1996 with a prayer to appoint a sole independent Arbitrator would be against the spirit of the consensus reflected in the agreement arrived at between the parties and would be against the core principles of Arbitration i.e. party-autonomy. It would have been a different situation where both the parties could have approached the Court for appointment of a sole Arbitrator provided they could not arrive at a consensus but that is not the case here. In such circumstances, this Court cannot override the intent of the parties merely on the asking of one party especially when the parties had already agreed and had proceeded to get their disputes adjudicated before a 3 Member Tribunal.

(c) From the perusal of Section 29-A and noticing the facts of the instant case, it would reveal that truly speaking after the death of the respondents' party-nominated Arbitrator, no proceedings could be taken forward which led to the time given to the Arbitral Tribunal, as per the Act, to complete the proceedings. In such circumstances, the parties were required to first complete the constitution of the Tribunal and thereafter could have moved an application before the Court as envisaged in Section 29-A of the Act of 1996 for extension of time.

(d) It was even possible for the petitioner to have moved the application under Section 29-A of the Act of 1996 for the extension of the time of the Arbitral Tribunal and before the same court, it could have sought appointment of a party-nominated Arbitrator on behalf of the respondents as it had failed to supplant the vacancy, however, this course was never adopted by any of the parties.

(e) The record further indicates that it is only when the respondent by letter dated 25.11.2024 appointed its party-nominated Arbitrator did the petitioner raise objections which for the aforesaid reasons are untenable. On the date of the notice issued by the petitioner in December, 2025, the constitution of the Arbitral Tribunal was complete and all that was required to be done was to have got the term extended by moving an application under Section 29-A of the Act of 1996 which has not been done.

(f) Section 11(6) is a default clause and only when the parties are unable to get an Arbitrator appointed in terms of the settled and agreed rules, can the default clause come into picture. It does not give any

independent right to the court in terms of Section 11 to override the terms of the contract to appoint an Arbitrator.

34. In light of the above, the decision relied upon by the learned counsel for the petitioner in the case of **Haryana Space** (Supra), it would reveal that in the said case, the apex Court had appointed the sole Arbitrator with the consent of the parties as would be clear from reading of para 18 of the said report. Hence, the said decision does not come to the aid of the petitioner.

35. Similarly, the decision of a Division Bench of this Court in the case of **Laxmi Kant Pandey** (supra) also is distinguishable on facts and the issue involved therein was whether merely by participating in the proceedings, it would be inferred that the party had waived his right to object in terms of Section 12 (5) of the Act of 1996. However, the said issue is not involved in the instant case for the reasons already disclosed hereinabove.

36. It would be worthwhile to notice the decision of the Apex Court in the case of **Jagdeep Chowgule v. Sheela Chowgule & others : (2026) 5 SCC 667** wherein the Apex Court had the occasion to consider the conflicting views regarding the applicability of Section 29-A and after going through the scheme of the Act it held that irrespective of the fact that whether an Arbitrator had been appointed by the High Court under Section 11(6) of the Act of 1996, an application for extension of time will lie before the Court as defined in Section 2(e) of the Act of 1996 i.e. before the District Court and the said District Court in exercise of

powers under Section 29-A would also be entitled to appoint an Arbitrator as required under Section 29-A (6) & (7) of the Act of 1996.

37. Thus, in the given circumstances, even the application for extension of time as well as for appointing or substitute Arbitrator could have been moved by the petitioner or the respondent, as the case may be, before the concerned court i.e. the District Court, but not done.

38. Thus, the procedure adopted by the petitioner and the reliance placed on Section 29-A and Section 12 read with Section 15 of the Act of 1996 to buttress its arguments to get a Sole Arbitrator appointed under these proceedings under Section 11(6) of the Act of 1996 is misconceived and misplaced.

39. Thus, in light of the aforesaid discussions, the submission of learned counsel for the petitioner does not find favour with this Court. The petition is misconceived and is accordingly **dismissed**, however, leaving it open for the petitioner to take recourse as may be available to him in law.

40. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh, J.)

August 20, 2026

Asheesh