

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

Case No: Arb App No.05/2024

*Reserved on: 10.07.2026
Pronounced on: 06.10.2026
Uploaded on: 06.10.2026*

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

**Kamal Krishan Chibber
(aged 83 years)
S/O Sh. Noralta Singh
Chibber,
R/O Ram Nivas, Ist Floor
M.K.Road, Khanna, Panjab
through his duly constituted
attorney Jeevan Chibber S/O
Kamal Krishan Chibber R/O
Ram Nivas, 1st Floor,
M.K.Road, Khanna, Panjab.**

.....Appellant(s).....

Through: Mr. M. A. Dar, Advocate.

v/s

- 1. UT of J&K
(Previously State of
J&K) through Chief
Secretary, new
Secretariat,
Srinagar/Jammu.**
- 2. Commissioner
Secretary, Power
Development
Department, New
Secretariat,
Srinagar/Jammu.**
- 3. Managing Director,
Power
Development
Corporation,**

**Boulevard Road,
Srinagar.**

**4. Chief Engineer,
Generation In-
Charge USHP-II
PDD Complex,
Bemina Srinagar.**

**5. Executive
Engineer, Civil
Maintenance
Division, Formerly
Wangat Link
Division (USH)),
Kangan.**

Through:

Mr. M. A. Chashoo, Sr. Advocate, with
Ms. Hikma Advocate.

...Respondent(s)...

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT

PER RAJNESH OSWAL-J

1. This is an appeal under Section 37 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 (in short, "the Act"), directed against a judgment dated **04.07.2024** passed in Arb. P.No.5/2019, whereby the learned Single Bench has allowed an application under Section 34 of the Act filed by the respondents and has come to set aside sole arbitrator's final award dated 31.12.2018 which otherwise was in favour of the appellant.

Factual Matrix:

2. Vide a letter of award bearing No. USHP-II/EC/27 dated **30.06.1988**, the appellant was awarded a contract for execution of balance work of Wangat Weir at USHP-II, Kangan. As per the terms and conditions of consequent agreement executed between the parties, period of completion stipulated was up to **30.11.1989**.
3. As the appellant was not able to complete the work within the stipulated time and also within extended period of time, i.e. up to year 1992, so the Executive Engineer concerned served a termination notice No. 214-16 dated **05.05.1998**, subsequently followed by instant termination of the contract on **05.05.1998**.
4. The total cost of allotted work was fixed at **Rs. 199.06 lakhs** against which the appellant is said to have completed the work only to extent of Rs. 113.00 lakhs up to **01.04.1994**.
5. The appellant had started approaching the respondents through series of representations dated **29.11.2000**, **30.12.2000**, **22.05.2001**, **11.04.2001**, **25.07.2003**, **31.07.2004**, **03.09.2005** and **26.02.2011** for settlement of his claim/s.
6. When his repeated communications received no response, the appellant invoked section 11 of the Act whereby in terms of an order dated **04.11.2013** in AA No. 19/2013, Mr. G.M. Dar,

District and Sessions Judge (Retd), was appointed as sole arbitrator, who entered upon the reference on 15.04.2014.

7. Before the Sole Arbitrator, the appellant, through his counsel, submitted his statement of claims. The composition of the statement of claims submitted by the appellant is as under:-

a. Balance escalation costs	:	Rs.21,43,536/-
b. Balance amount of the final bill	:	Rs. 76,865/-
c. Flood damages	:	Rs. 24,25,987/-
d. Diversion of Nallah	:	Rs. 11,32,774/-
e. On account of security deposit and amount of earnest money deposit	:	Rs.8,05,000/-.
f. Interest @ 18% compound from 1999 to 2013	:	Rs.1,77,77,237/-.

8. It was stated by the appellant that, at one point of time, the respondents took a plea that some civil suit litigation was pending before the Civil Court of learned Additional District Judge, Srinagar; therefore, the release of payment due to the appellant was to remain on hold which had made the appellant to seek the indulgence of said Civil Court to obtain a clarification on **18.08.2005**, wherein it stood stated that there is no prohibitory order in operation on the strength of which the settlement of claims and its payment to the appellant could be denied to the appellant, but despite furnishing of said clarification, nothing was done in the matter, and the officials of the respondents continued to sit over the matter thereby causing an irreparable loss to the appellant.

9. It was stated by the appellant that, acting upon the communication dated **26.02.2011**, the officials of the respondents prepared a final bill which was submitted to the Executive Engineer in response to query raised by him vide communication dated **11.07.2012**.
10. The appellant, thereafter, obtained the requisite information under the Right to Information Act, wherein it was disclosed that an amount of **Rs. 21,43,536/-** was payable to the appellant towards escalation. It was further indicated that a final bill had been passed for payment of **Rs. 76,865/-**.
11. The appellant submitted that, apart from the aforesaid undisputed amounts payable to him, he was also entitled to payment towards restoration of flood damages and construction of a bund, the works which were executed at the instance and on the directions of the Engineering Department of the respondent-Corporation.
12. The claimant further sought refund of the amounts deducted from his running bills and retained as security deposit, amounting to **Rs. 7,75,000/-**, besides the earnest money deposit of **Rs. 50,000/-**.
13. Accordingly, the appellant asserted his entitlement to the aforesaid amounts as well as to the other claims arising out of the execution and termination of the contract.
14. The respondents, in their reply, submitted that the appellant had executed the work to the tune of **Rs.113.00** lakhs up to

01.04.1994 and thereafter abandoned the same and consequently, the respondents were compelled to re-allot the balance of the work to M/s M & Co., who executed it through M/s Chibber and Co. The date of commencement of the said work was **01.08.1998**, at revised rates amounting to **Rs.125.71** lakhs. It was further stated that the restoration work necessitated by the floods of 1992 and 1995 had been paid for in full.

- 15.** The respondents further submitted that merely because the contractor had raised a claim before the competent authority did not mean that the amount claimed towards the contract, including the amounts deducted from the running bills and the earnest money deposit, would be released. According to the respondents, the release of such amounts was subject to clearance of the M-80 work at site and verification of the relevant accounts by the concerned authorities.
- 16.** The learned sole arbitrator, in terms of award dated **30.12.2018**, held the appellant entitled to the following amounts:

Head	Amount
Payment on account of restoration work.	Rs. 25,75,036/-
Payment on account of earnest money.	Rs. 50,000/-
Payment on account of security deposit.	Rs. 8,10,000/-
Payment on account of escalation.	Rs. 21,43,536/-
Payment on account of final bill.	Rs. 76,865/-

- 17.** Further, the appellant was held entitled to interest on the aforesaid amount at the rate of 6% per annum from the date of filing of the arbitration petition till the date of the award and at the rate of 18% per annum after one month from the date of passing of the award till the final payment of the awarded amount. The respondents were also directed to pay an amount of **Rs.1,00,000/-** towards the Arbitrator's fee, to be released along with the award.
- 18.** It needs to be noted that an interim award dated **20.01.2015** was passed, whereby the appellant was held entitled to escalation charges to the tune of **Rs.21,43,536/-**.
- 19.** The said interim award was assailed by the respondents by filing time barred application under Section 34 of the Act but the learned Principal District Judge, Srinagar, vide an order dated **08.02.2017**, had dismissed the challenge as being barred by limitation.
- 20.** Said order dated **08.02.2017** passed by the learned Principal District Judge, Srinagar, was thereafter upheld by the learned Single Bench in terms of order dated **21.09.2023** in Arb. Appeal No. 06/2017.
- 21.** Learned Single Bench, in para 20 of the impugned judgment dated 04.07.2024, came up with formulation of points of determination relatable to adjudication of section 34 petition

so filed by the respondents and which points of determination are as under:

- (i) **Whether the claims entertained and awarded by the learned arbitrator in terms of the impugned arbitral award are stale and time barred and thereby rendering the arbitral award in conflict with public policy of the State and such claims are otherwise beyond the scope of submission of arbitration?**
- (ii) **Whether the award on an amount of Rs. 25,82,609/- on account of restoration of flood damaged works in the presence of clause 21 of the agreement ('force majeure' clause) does not fall within the terms of submission to arbitration?**
- (iii) **Whether the interest awarded by the arbitrator is contrary to statutory provisions of the Act and therefore renders the award against public policy of the State.**
- (iv) **Whether the interim arbitral award dated 21.01.2015 is an independent final award quo the item of claim it has decided and therefore does not merge with the impugned arbitral (final) award?**

22. Learned Single Bench, with respect to number (i) point of determination related to limitation aspect, came to hold that cause of action had accrued to the appellant on the termination of the contract taking place on **5th of May, 1998** from which date onwards the appellant had become entitled to claim payments, be it in relation to the work executed or by way of damages for the breach of contract.

- 23.** Learned Single Bench has come to hold that the last leg of the cause of action which otherwise had set-off w.e.f., **5th of May, 1998**, for the appellant to act was on **12th of September, 2000** when the claims put-forth from his end was repudiated by the respondents and that being the position, the laying of his claims by the appellant before the learned arbitrator is to be deemed to have been on **04.11.2013** which rendered the arbitration proceedings as seriously time barred.
- 24.** Learned Single Bench has, however, salvaged the interim award dated **20.01.2015** in terms whereof claim of the appellant for amount of **Rs. 21,43,536/-** stood granted and held the interim award having attained the finality in the manner as has been set out by the learned Single Bench in its judgment.
- 25.** The learned Single Bench came up with the final words of adjudication, in exercise of jurisdiction under section 34 of the Act, as set out in para 54, which is reproduced for the sake of easy reference:

“For the foregoing reasons, this petition is allowed and the entire award is set aside except arbitrator’s fee. The award of a sum of Rs. 21,43,536/- on account of escalation (covered by interim award dated 21st January, 2015) is found redundant and is held so. However, the respondent-Contractor shall be entitled to an amount of Rs. 21,43,536/- in terms of interim arbitral award dated 21st January, 2015. The respondent-Contractor shall be free to put interim award to execution if not already done. The learned

arbitrator shall be entitled to a sum of Rs. 1.00 lac along with interest @ 6% per annum to be reckoned with effect from the 31st December, 2018, till the same is paid to the learned arbitrator by the petitioners provided the same is not already paid.”

Grounds of Challenge:

26. The impugned judgment is challenged, *inter alia*, on the following grounds:

- a. that the learned Single Bench has committed a grave error in law in not taking a holistic view of the matter while not considering the effect of communication dated **12.09.2000** which in unequivocal and expressed terms, indicated that payment would not be released until the litigation pending in the civil court is decided. In that view of the matter, the cause of action got deferred till 2011 when the suit was finally dismissed, and the said information was conveyed to the respondent department vide communication dated **26.02.2011** based on which communication, a final bill in relation to subject contract along with bill for payment of escalation was submitted for payment as is evident from the forwarding letter dated **17.07.2012** accompanying the escalation/final bill, but the learned Single Bench has failed to take into consideration the acknowledgement of liability by the respondent department in its communication (supra).
- b. that the learned Single Bench has nowhere provided reason for not accepting the view taken by the learned sole arbitrator whose finding about claim not being time-barred was duly supported by cogent reasons. The learned Arbitrator had elaborately dealt with the accrual

of cause of action as in the present case, the cause of action, be it to seek constitution of arbitral tribunal or submit the claims before arbitral tribunal, had actually accrued only after submission of bill for payment of escalation/final bill in the year 2012, therefore, considering this intervening period, no fault could be found in the findings recorded by the learned arbitrator.

- c. that the learned Single Bench has not taken note of the observations made in the judgment in the case of *M/s B&T AG Vs. Ministry of Defense* providing for extension of limitation upon exclusion of the period in facts and circumstances of the case.
- d. that the plea of limitation was mixed question of law and fact and learned arbitrator, after taking into account the material placed on record, found the plea of limitation unsustainable, therefore, learned Single Bench, vested with limited scope of interference with the award as provided under Section 34, could not have interfered with the findings returned by the learned Arbitrator.
- e. that the learned Single Bench has failed to take note of and give effect to the provisions of section 19 of the J&K Limitation Act, Samvat 1995 which provides for a fresh period of limitation where, before the expiry of the prescribed period, an acknowledgment of liability is made in writing and signed by the party against whom such right or claim is asserted. The appellant was, therefore, entitled to the benefit of section 19 of the Limitation Act, Samvat 1995, in view of the express acknowledgment of liability made by the Executive Engineer vide communication dated **12.09.2000**. The learned Single Bench, however, failed to appreciate the legal impact and effect of the said acknowledgment and consequently

erred in holding the appellant's claim to be barred by limitation.

- f. that the learned Single Bench ought to have considered that the dismissal of pending suit in the month of February 2011 provided a fresh cause of action to the appellant, and within three years therefrom the appellant resorted to arbitration.
- g. that the case in hand was required to be dealt with in accordance with the law prevailing prior to the year 2015, during which period the petition under Section 11 of the Act was filed, and during the said period the issue of limitation was determined during adjudication of the application under Section 11 of the Act, and that being the legal position, the learned Single Bench was not required to go into the controversy regarding limitation, which was raised neither during proceedings under section 11 of the Act, nor before the learned arbitrator, but was raised for the first time during submission of written arguments.

Submissions:

- 27.** Learned counsel for the appellant has submitted that the learned Single Bench has committed an error while considering the effect of communication dated **12.09.2000**, as limitation runs from the date when the right to sue accrues. In terms of communication dated **12.09.2000**, the Executive Engineer of the respondents stated that the final bill shall be entertained after the proceedings pending before the civil Court come to an end. Once the respondents themselves deferred the consideration of the final bill subject to the

outcome of the suit pending before the civil court, the cause of action stood deferred and accrued afresh only when the suit was dismissed in the month of February 2011. He has further submitted that the Department itself acknowledged the accrual of a fresh cause of action when the final bill dated **26.02.2011** was prepared by the Department and, within a period of three years, a petition under Section 11 of the Act was filed i.e. in the year 2013.

- 28.** Learned counsel for the appellant has further submitted that the explicit acknowledgment of specific outstanding amounts of **Rs.21,43,536/-** towards escalation and **Rs.76,865/-** towards the final bill, contained in the 2011 response under the Right to Information Act, triggered the invocation of Section 19 of the Act, and this acknowledgment having been made within the three-year limitation window w.e.f. 2011, therefore, the petition filed by the appellant in the year 2013 and the claims of the appellant ceased to be time-barred. He has further argued that the deferment was constituted as a contingent contract under Section 31 of the Contract Act; therefore, the application of the respondents was required to be dismissed. He has further argued that, in terms of Section 4 of the Act, in case of failure to invoke Section 16 of the Act, the respondents cannot raise the defence that was available and knowingly waived during the proceedings under Section 11 of the Act (supra). It is also contended that the learned

Single Bench has not taken into consideration that an interim award was passed by the learned arbitrator, which operates as res-judicata with regard to the timeliness of the claim of **Rs.21,43,536/-**. It is further argued that the learned Single Bench has wrongly applied the judicial precedents to the present case, as the judicial precedents relied upon by the learned Single Bench were distinguishable on facts and in law.

- 29.** *Per contra*, Mr. Chashoo, learned Senior Advocate appearing for the respondents, has submitted that the appellant in his statement of claims, nowhere explained or justified delay from the year 2004 up to the year 2012, despite having issued various communications from 2000 to 2004, as to what prevented him from approaching the Court. Rather, the appellant has taken a lame excuse that, on account of the civil dispute pending between him and his brother before the Court of the Additional District Judge, he could not initiate the proceedings. However, in his petition, the appellant has specifically mentioned that in the year 2005, he obtained the status of the case pending before the civil court, wherein he was informed that there was no injunctive or prohibitory order. In such circumstances, nothing prevented the appellant from invoking arbitration and as such, it is evident that the cause of action accrued to the appellant in the year 2005, but he remained silent till the year 2013 and thereafter approached the court after a gap of eight years.

- 30.** He has further submitted that the findings of the learned arbitrator sought to be relied upon to overcome the issue of limitation, are vague, perverse and without any legal basis.
- 31.** He further argued that Clause 54 of the Agreement provides that there should be a reasoned award, whereas the arbitrator has worked out the quantum without disclosing the basis thereof or making any reference to the documentary or oral evidence.
- 32.** He further contended that the learned Arbitrator relied upon certain final bills and observed that instead of aforesaid amount only **Rs.9,64,225/-**, have been paid and, as such, held the contractor entitled to **Rs.25,75,036/-**, which is beyond the record and the material available on the file. The Arbitrator, in fact, has gone beyond the pleadings.
- 33.** He has further argued that Clause 32 of the Agreement (force majeure) provides that, if during execution of the work any force majeure event, such as an earthquake, war, flood, etc., takes place, neither of the parties could be fastened with any liability. However, the learned Arbitrator ignored the said clause. In fact, the claim for flood damages was not supported by any clause in the Agreement.
- 34.** He has further argued that the claims on account of security deposit and earnest money deposit were not tenable, as the appellant never challenged the termination of the contract by

the respondents as illegal and, rather, filed the petition/claims only for the alleged work done by him. He has further argued that because of the inaction and indolence of the appellant, the Agreement was terminated, due to which the respondent-Department suffered huge losses and as such the appellant is not entitled to any amount.

Appreciation:

- 35.** Before addressing the appellant's contentions, it is appropriate to note that the appellant is pressing only the claims relating to **flood damages, security deposit, earnest money**, and the **final bill**, which were set aside by the learned Single Bench. The claim regarding price escalation has already been adjudicated under the learned arbitrator's interim award which has attained finality.
- 36.** The first contention raised by the appellant is that, in terms of communication dated **12.09.2000**, it was stated that the payment would not be released until the decision of the civil litigation pending before the Civil Court. It is urged that in view thereof, the cause of action stood deferred till 2011, when the suit was finally dismissed.
- 37.** It needs to be noted that in the claims filed before the learned arbitrator, no such communication was appended with the claims submitted by the appellant. Be that as it may, the learned Sole Arbitrator has placed considerable reliance upon

this communication to hold that the claim of the appellant was within the period of limitation.

- 38.** A perusal of the communication dated **12.09.2000** reveals that it was issued in response to the letter dated **16.06.2000**. In the said communication, it is stated that the termination of the contract was a direct result of the withdrawal of the power of attorney executed by the appellant in favour of Mr. D.K. Chibber, who was looking after the work till the same was withdrawn by the appellant through telegram dated **10.04.1998**. The reasons for withdrawal were detailed by the appellant in the communication dated **05.05.1998** regarding the FIR lodged against D.K. Chibber at Police Station, Kangan.
- 39.** In the said communication, the claims put forth by the appellant under Part A and B were outrightly rejected, and it was stated that the claims were nothing but distortion of facts. It was further stated that the appellant's backing out of the contract and its consequent termination had rendered the whole process infructuous and was contrary to the interest of the Project, and that the Project was not supposed to provide any relief to a defaulting contractor under the terms of the Agreement.
- 40.** Regarding flood damages for the years 1995-96 and construction of diversion bunds, it was stated that the same had been submitted to the Managing Director, PDC, for accord of approval. However, it was found that the estimated amount

was repeatedly claimed as dues by the appellant and, as per the record, the appellant had already been paid in full for the quantities of work done prior to the floods of 1995. Therefore, the claims on that account were denied. As per the records, the flood damages were covered by the “Force Majeure” clause of the Agreement, which prohibited either of the parties from claiming damages from the other.

41. Accordingly, the claim of the appellant on the aforesaid grounds was rejected, and it was stated that the appellant had been paid **Rs.25,82,609/-** towards the work of reconstruction of flood damages, etc., and diversion bund up to **05.05.1998**, which payments were accepted by the appellant in terms of communication dated **16.05.1998**. It was also stated that the balance unexecuted work covered by these estimates was completed through a new agency, namely, M/s M & Co.

42. Regarding escalation, it was stated that the net payable amount and release of earnest money, etc., were subject to the imposition of the penalty clause of the Agreement by the competent authority and liquidation of other outstanding dues against the appellant in the shape of departmental materials, pending electricity bills, etc.

43. After making these observations, the Executive Engineer concerned, in the concluding paragraph, observed as under:

“Nothing is withheld in your running account bills as claimed by you. You know that your erstwhile

attorney holder Sh. D.K.Chibber has filed a suit against you regarding the contract allotted to you. The proceedings are underway in the Hon'ble Court and its decision is awaited. Final bills shall be entertained thereafter, for further necessary action by this officer.

Project authorities are ready to discuss all pending issues in light of agreement only. You can attend this office for further discussions so that the issues are made clear to you as per relevant records.”

- 44.** In the said communication, the claims of the appellant under Parts A and B regarding restoration of flood damages and construction of diversion bunds were rejected and not accepted by the respondents at all.
- 45.** Regarding the final bill, the amount is merely **Rs. 76,865.**
- 46.** The communication dated **12.09.2000** unequivocally establishes that the claims under Parts C and D regarding escalation and Parts E and F regarding the net payable amount on account of final bill, security deposit etc. were only to be examined.
- 47.** The text of the communication dated **12.09.2000** clearly restricts the consideration of the appellant's claim for the final bill, security deposit and earnest money, etc. So far as the escalation amounting to **Rs.21,43,536/-** is concerned, the same already stands granted to the appellant in terms of the interim award.

- 48.** Thus, it cannot be said that the concluding paragraph of the communication dated **12.09.2000** deferred consideration of the entire claim of the appellant regarding awaiting the decision of the civil court. The claim regarding the restoration work and the diversion bunds had already been outrightly rejected, but still the appellant did not invoke arbitration for the said claims. Thus, the claims on account of restoration work and the diversion bunds were time barred.
- 49.** A perusal of the award passed by the learned Arbitrator reveals that the learned Arbitrator has returned a perverse finding with regard to the communication dated **12.09.2000**, whereby he has observed that, in terms of the said communication, the respondent-department had declined payment on account of the pendency of the civil suit and the claimant was informed to wait till the outcome of the suit (page 29 of the award). Therefore, the very basis of the learned Arbitrator's finding that the claim was within limitation stands removed.
- 50.** The second contention also stressed by the learned counsel appearing for the appellant is that dismissal of the suit in the month of February 2011 provided the cause of action to the appellant in light of communication dated **12.09.2000**.
- 51.** We have already held above that the appellant cannot claim the benefit of communication dated **12.09.2000**. Moreso, it is the case of the appellant that though the medium of the

clarification was sought from the Civil Court in the month of August 2005 yet there was no prohibitory/restraint order regarding payment of the claims of the appellant and despite his request, the respondents did not release the amount.

52. Thus, there is an admission on the part of the appellant that the respondents had wrongly retained the amount due to him in the year 2005. However, the appellant remained silent, while submitting his claim, as nothing prevented him from invoking arbitration for settlement of his claim till the year 2013, within a period of three years from August 2005. Even if it is assumed, for the sake of arguments, that, in terms of communication dated **12.09.2000**, the respondents had deferred consideration of the final bill, security deposit and earnest money deposit of the appellant till the outcome of the suit, still the claims of the appellant would be time barred. In our opinion, the learned Single Bench rightly observed that **12.09.2000** was, at the very least, the date on which the right to sue accrued to the appellant.

53. The appellant filed the arbitration seeking petition under Section 11 of the Act in the year 2013, i.e. after a period of eight years from the submission of the said clarification to the respondents, and by that time, the claim of the appellant had already become time-barred.

54. The learned Arbitrator accepted the plea of the appellant that the cause of action accrued to appellant only in the month of

February 2011, when the suit pending before the Civil Court was dismissed. The appellant himself informed the respondents in 2005 of the absence of any civil court restraint on releasing of the amount. Consequently, this plea cannot save his claim from the rigors of limitation. Therefore, the learned arbitrator could not have held that the claim of the appellant was within the period of limitation.

- 55.** It was also urged that the final bill was prepared **26.02.2011** and, on that account also, a fresh cause of action accrued to the appellant in the year 2011.
- 56.** This bill, as per the own admission of the appellant, included claim on account of escalation i.e. **Rs. 21,43,536/-** and final bill of **Rs. 76,865/-**. At the cost of repetition, it is stated the claim on account of escalation forms part of interim award, which has attained finality. Learned counsel for the appellant vehemently argued that in terms of Section 19 of the Limitation Act, it amounted to an acknowledgment of liability by the respondents and, as such, a fresh period of limitation accrued in favour of the appellant. In this context, it would be appropriate to extract Section 19 of the Limitation Act, which reads as under:

“19. Effect of acknowledgment in writing.—(1)

Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he

derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Evidence Act, (XIII of 1977), oral evidence of its contents shall not be received.”

- 57.** It is worthwhile to note that mere preparation of a final bill would not amount to an acknowledgment of liability by the respondents, more particularly when the same was allegedly prepared in the month of Feb 2011.
- 58.** The respondents are right in submitting that the preparation of the final bill, without an approval by the competent authority, could in no manner be considered as an acknowledgment of liability so as to furnish any fresh cause of action to the appellant. As already mentioned above, the claims of the appellant had already become time barred by 2012, and even if it were to be assumed for the sake of arguments that preparation of bill would amount to acknowledgement of liability, the said acknowledgement was made after the claim had already become time barred, as such, there is no force in this contention as well, and the same is rejected.
- 59.** Under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1997, an arbitral award may be set aside if it conflicts with the Public Policy of India.

- 60.** Pursuant to Section 43 of the Act, the Limitation Act applies directly to arbitration proceedings. Consequently, entertaining a time-barred claim violates statutory mandate, rendering the resulting award vulnerable to being set aside for violating Public Policy. In the present case, the learned Arbitrator erred by entertaining a claim expressly barred by limitation.
- 61.** It was also urged by learned counsel for the appellant that by participating in the arbitration proceedings and not raising the plea of limitation during proceedings in application under section 11 of the Act, the respondents had waived the ground of limitation in respect of the claims raised by the appellant.
- 62.** The learned Single Bench has observed that the application filed by the appellant under Section 11 of the Act for appointment of an arbitrator was barred by limitation, as patently stale claims were raised. On account of the fact that the issue of limitation was not raised in relation to the application filed by the appellant under Section 11 of the Act, the learned Single Bench found himself handicapped in examining the same in the proceedings under Section 34 of the Act. At the same time, the learned Single Bench observed that the claims adjudicated upon by the learned arbitrator would be deemed to have been filed in the year 2013, i.e. on commencement of the arbitral proceedings, but were nevertheless time-barred.

- 63.** In **Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Pvt Ltd. (2021)5 SCC 738** it has been observed by the Hon'ble Apex Court that the question as to whether the claim is time-barred is otherwise to be decided by the arbitral Tribunal itself.
- 64.** Accordingly, we are of the considered view that there is no force in the contention of the appellant that the respondents had waived their right to object to the claims of the appellant by participating in the arbitral proceedings and not raising any objection with regard to the stale claims during the proceedings under Section 11 of the Act, as such, the same is rejected.
- 65.** Lastly, it was contended that the respondents ought to have resorted to section 16 of the Act to challenge the arbitrator's jurisdiction on ground of limitation, but the respondents failed to do so. The relevant paras of the judgment of the Hon'ble Supreme Court in **BSNL's case**, are extracted as under:

"40. The issue of limitation, in essence, goes to the maintainability or admissibility of the claim, which is to be decided by the Arbitral Tribunal. For instance, a challenge that a claim is time-barred, or prohibited until some precondition is fulfilled, is a challenge to the admissibility of that claim, and not a challenge to the jurisdiction of the arbitrator to decide the claim itself.

Xx

xx

xx

xx

51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185] or mere settlement discussions, where a

final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that: "where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." -----"

- 66.** The procedural issues, including the claims being time barred, cannot be confused with jurisdictional issues which only can be raised by invoking Section 16 of the Act. Thus, it cannot be said that failure to invoke section 16 of the Act would, by itself, amount to a waiver of the respondents' right to raise an objection to the stale and time barred claims of the appellant.
- 67.** We have examined the judgment passed by the learned Single Bench, who has relied upon the judgments of the Hon'ble Supreme Court in *M/s B and T AG v. Ministry of Defence*, (2023) 7 SCR 599, and *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.*, 2024 INSC 155. We do not find any error in the approach adopted by the learned Single Bench while setting aside the award except to the extent of Arbitrator's fee.
- 68.** In view of the foregoing discussion and the findings recorded hereinabove, we find no merit in the present appeal. The learned Single Bench has rightly appreciated the material on record and has correctly concluded that the claims entertained and adjudicated upon by the learned Arbitrator were barred by limitation. The appellant has failed to demonstrate any error of law or jurisdictional infirmity in the judgment impugned

herein warranting interference by this Court in exercise of its appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1997. The appeal is, accordingly, dismissed. There shall be no order as to costs.

(Rahul Bharti)
Judge

(Rajnish Oswal)
Judge

Jammu
06.10.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable? **Yes.**

