



2025:CHC-OS:143

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP-COM 461 of 2024

P.K THAKUR AND COMPANY PRIVATE LIMITED
Vs.
STEEL AUTHORITY OF INDIA LIMITED

For the Petitioner : Ms. Suchismita Chatterjee Ghosh, Adv.
Mr. Samridha Sen, Adv.
Mr. Malay Kumar Seal, Adv.

For the Respondent : Mr. Chayan Gupta, Adv.
Mr. Pourush Bandyopadhyay, Adv.
Mr. Dwip Raj Basu, Adv.

Reserved on : 04.08.2025

Judgment on : 06.08.2025

Shampa Sarkar, J.

1. This is an application for appointment of an arbitrator. Sometime in February 11, 2008, a notice inviting tender was published by the respondents for setting up of Intake Works & Plant Make-Up Water & Drinking Water System (package 20) at IISCO Steel Plant. The petitioner participated in the tender process by forming a consortium with ION Exchange (India) Limited. The consortium was selected as the highest bidder on November 28, 2008. A



contract was executed by and between the parties. The scope of the work involved construction of "Raw Water Reservoir 1 and 2". According to the petitioner, during the course of execution of the work, hard rocks had to be removed from the top soil. The rock cutting was an essential feature for effective execution and completion of the work. On May 12, 2011, the consortium raised a demand on the respondent and the payment was released. On June 20, 2011, a letter was written to the SAIL authorities by the petitioner with a categorical explanation and break up of the calculation for the demand on account of additional works. The claim of the petitioner was denied by the respondents on January 30, 2015, after 4 years. The petitioner alleged that a discriminatory treatment was meted out to the petitioner, inasmuch as, the consortium was paid for similar work. The petitioner filed a writ petition before this Court being W.P No. 17280(W) of 2017. The said writ petition was dismissed by a learned Single Judge on July 14, 2017. The order was challenged in M.A.T No. 1223 of 2017, which was renumbered as F.M.A 1400 of 2017. The appeal was also dismissed on June 27, 2023. The petitioner filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court of India, which was dismissed. The petitioner laid emphasis on the observation of the Hon'ble Supreme Court while dismissing the SLP that, the petitioner would be entitled to take recourse to arbitration. On February 6, 2024, arbitration was invoked. The date of the letter went down wrongly. The letter of invocation was received by the respondent, which was replied to on February 16, 2024. According to the respondent, the contract ended in 2017, which made the invocation barred by limitation. The petitioner contended that, the claim was in respect of



additional work done up to July 15, 2013. The claim was rejected on January 30, 2015. The cause of action arose on the date of rejection i.e. 30th January, 2015. Up to 2016, the petitioner made several requests for payment. Having no other alternative, the writ petition was filed upon obtaining legal advice. The petitioner sought for exclusion of the period between June, 2017 and January 2, 2024 i.e. the time between filing of the writ petition and dismissal of the SLP, in computing the period of limitation in invoking arbitration. The petitioner's contention was that, the observation of the Hon'ble Supreme Court that the petitioner had an alternative remedy by way of arbitration, was a liberty granted to the petitioner to invoke the arbitration clause, upon dismissal of the SLP. The petitioner claimed Rs. 13,89,37,291/- on account of additional work along with interest at the rate of 18% per annum, from the date of demand till the date of actual payment. Article 10 of the contract was relied upon and a prayer was made for reference of the dispute to arbitration. The petitioner contended that any further attempt at conciliation of the dispute, would be a futile exercise. The rejection of the claim, the vehement opposition before the writ court and in the appeal, clearly indicated that the respondent was unwilling to settle the dispute. Thus, the requirement for conciliation under clause 18 was not mandatory in the instant case. The petitioner's next contention was that, in view of the absence of an agreement between the parties as to whether the arbitration would be governed by the rules of Indian Council of Arbitration (ICA) or Scope Forum of Conciliation and Arbitration (SFCA), the mechanism provided under the clause failed, and this court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred



to as the said Act) should refer the dispute. The jurisdiction clause was referred to in support of the contention that the entire cause of action arose within West Bengal. The parties had agreed to an exclusive jurisdiction clause which provided that, the Courts of Asansol, West Bengal, would have jurisdiction.

2. It was submitted that, the challenge in the writ petition was on the discriminatory treatment meted out to the petitioner by refusing to pay the amount raised for the additional work done, although, the consortium was paid money for similar work. Ms. Chatterjee Ghosh submitted that the scope of adjudication by a writ court and the scope of adjudication by an arbitrator were different and distinct. The writ petition was dismissed on the ground that, disputed questions were involved. The learned Single Judge did not reject the claims of the petitioner. The argument before the writ court was that, the respondent being an authority under Article 12 of the Constitution of India had acted in an arbitrary manner, by denying the claim of the petitioner. The arbitrator was the proper forum to determine the validity and admissibility of the claim, upon interpretation of the terms and conditions of the contract and upon appreciation of evidence to be adduced by the respective parties. According to the learned Advocate, the scope of work under the contract included all works which would have to be done for effective execution of the project. The scope of the work was not restricted only to works mentioned in the contract, but also to all such works which were required to be undertaken for proper completion of the project. Clause 8.2 of the contract was relied upon to substantiate such argument. It was urged that the writ petition was dismissed on the ground that adjudication of the writ petition would involve



interpretation of the terms of the contract, which was beyond the scope of judicial review. Learned Advocate further submitted that in the appeal, the Division Bench also observed that the issue as to whether additional work of blasting / removal of the hard rock was either beyond the terms of the contract or an essential part, for the purpose of total and effective completion of the project, were questions of fact, which could only be determined upon appreciation of evidence. Ms. Chatterjee Ghosh contended that the impugned Memo dated January 30, 2015, by which the claim for the additional work done (rock cutting) was refused, had not been interfered with, as the courts held that the facts put forward ought to be proved by leading evidence and the writ court was not the proper forum to weigh evidence. The arbitrability of the claim was not decided in those proceedings. Hence, the referral court should appoint an arbitrator to adjudicate the claim.

3. Learned Advocate relied on the following decisions to substantiate that the scope of interference of a referral court under section 11(6) of the said Act :-

(a) Goqii Technologies Private Limited Versus Sokrati Technologies

Private Limited (Civil Appeal No. 12234 of 2024, arising out of SLP

(C) No. 15562 of 2024),

(b) Interplay Between Arbitration Agreements under Arbitration and

Conciliation Act, 1996 & Stamp Act, 1899, In re, reported in (2024)

6 SCC 1

(c) Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd. and Anr.,

reported in 2024 SCC Online SC 3191



4. It was urged that the existence of the arbitration agreement between the parties was not in dispute. The scope of enquiry of this Court was microscopic. A, prima facie, examination as to the existence of such arbitration agreement would suffice the need to refer the dispute to arbitration. A detailed examination on the factual matrix was not contemplated by law. The referral court could not go deeper into the facts and weigh the probative value of the documents on record, while deciding the prayer for reference. A deeper probe would be contrary to the legislative intent behind the amendment of 2015. The said amendment further limited the scope of judicial scrutiny to a, prima facie, determination of the existence of an arbitration agreement.

5. On the proposition that the provisions of section 14 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act') would be applicable in the instant case, in computing the period of limitation, reliance was placed on the following decisions:-

(a) ***M.P. Steel Corpn. v. CCE***, reported in **(2015) 7 SCC 58**,

(b) ***Gimpex (P) Ltd. v. Manoj Goel***, reported in **(2022) 11 SCC 705**

(c) ***Laxmi Srinivasa R & P Boiled Rice Mill v. State of A.P. and Anr***,
reported in **2022 SCC OnLine SC 1790**.

6. It was submitted that, as long as the petitioner was pursuing the legal remedy, in a bona fide manner, the entire period between the filing of the writ petition and disposal of the SLP, should be excluded. Learned Advocate submitted that exclusion of time under section 14 of the Limitation Act was wide enough to cover all such cases in which the courts refused to entertain a matter as the *lis* could not be decided by the said forum for various reasons



and not only on the ground of lack of jurisdiction. Any reason, be it legal or factual, which inhibited entertainment of the writ petition on merits, was covered by the provisions of section 14 of the Limitation Act. The section deserved a liberal approach in its interpretation and applicability.

7. Reliance was placed on the following decisions in support of the contention that the principles of res judicata, provisions of Order II Rule 2 and estoppel would not apply at the stage of reference:-

(a) Parsvnath Developers Ltd. & Anr. v. Rail Land Development Authority, reported in **2018 SCC OnLine Del 12399**.

(b) Subodh Prakash vs. Rajiv Gaddh decided in **(ARB 578 of 2021)**

(c) Gannon Dunkerley & Co. Limited vs Union of India, Ministry of Road Transport and Highways decided in **ARB.P. 1073 of 2022**.

8. The petitioner's contention was that the arbitral tribunal was the appropriate forum to examine and decide whether the claim was barred by res judicata. Such determination would involve appreciation of evidence. Learned Advocate further submitted that any extensive enquiry or scrutiny into the nature of the claim in the writ petition or in the appeal, would exceed the limited jurisdiction of this Court. It was urged that clause 7.1.2 read with clauses 8.2. of the contract permitted the petitioner to claim money in lieu of the additional work done. Unless removal of the hard rock was achieved, the project could not be completed. According to Ms. Chatterjee Ghosh, this was a fit case for reference of the dispute to arbitration.

9. Mr. Chayan Gupta, learned Advocate for the respondent submitted that the claim was ex facie barred by limitation and "dead wood". The period of



limitation would be three years from the date of accrual of the claim. The petitioner ought to have invoked arbitration within three years from the date when the payment became due. The first letter of demand for the price for the additional work of hard rock excavation, was issued on June 20, 2011. That was the starting point of limitation and the period of limitation expired on June 20, 2014. The extra claim made by the petitioner was denied after the expiry of the period of limitation on January 30, 2015. Such denial would not extend the period of limitation. The writ petition was affirmed on June 16, 2017. The cause of action at that time was already barred by limitation. The writ petition was filed beyond a period of 1092 days. By the time the SLP was dismissed, the cause of action was barred by a period of 3483 days. The notice under Section 21 of the said Act was issued after expiry of 3518 days from the date of accrual of the cause of action i.e. on February 6, 2024. The application for reference to arbitration was barred by a period of 3554 days. Thus, the cause of action was barred by 3554 days, by the time the application for appointment of an arbitrator was filed.

10. Mr. Gupta placed reliance on Section 14 of the Limitation Act and submitted that, the exclusion of time as contemplated under the said provision would have been available to the petitioner, had the writ petition and appeal therefrom, as also, the SLP had been rejected on the ground of lack of jurisdiction. The writ petition and the proceedings therefrom were all decided on merits, and as such, the provision of Section 14 would not apply. It was nobody's case that the petitioner was pursuing a remedy before a wrong forum, which did not have jurisdiction to entertain the proceeding.



11. It was contended that the findings of the learned single Judge and the Division Bench would indicate that the courts were of the view that the claim for additional work was not tenable in law and could not be entertained. Thus, the issues were finally determined in those proceedings and the prayer for reference of the dispute for a further decision by an arbitrator, was barred by the principles of res judicata and issue estoppel.

12. Referring to the affidavit-in-reply filed by the petitioner to the affidavit-in-opposition of SAIL filed in the writ proceeding, Mr. Gupta contended that, it was the petitioner's own case that, the additional work was not covered by the scope of the contract and the arbitration clause would not be binding, insofar as, the determination of the money claim arising out of such additional work was concerned. The petitioner urged before the writ court that, no other speedy, efficacious or alternative remedy was available to the petitioner. Such submissions of the learned Advocate for the petitioner were recorded in the order dated July 14, 2017, by the learned Single Judge while disposing of the writ petition. Mr. Gupta submitted that the writ petitioner always understood that such additional work was outside the scope of the contract, and as such, the arbitration clause would not be a deterrent for the writ court to adjudicate the issues involved in the writ petition. The averments in the writ petition were placed in great detail to demonstrate that the entire cause of action in the writ petition arose out of the claim for the extra work done in removal of the hard Rock. The same claim was sought to be further reopened in an arbitration proceeding.



13. According to Mr. Gupta, having failed in the attempt to get an order for payment of the money for the additional work, the petitioner was reopening the entire issue, by invoking the arbitration clause. Mr. Gupta submitted that the decisions relied upon by the petitioner on the scope of interference by a referral court, were not applicable in the facts of the present case. The petitioner's own submission before the writ court and the Division Bench was that the claim for additional works were not covered by the arbitration agreement and those claims were beyond the scope of the contract.

14. Mr. Gupta further submitted that by the time the writ petition was filed, the claim was barred by limitation. The period between the pendency of the writ petition and the ultimate dismissal of the SLP, should not be excluded in this case. Moreover, the petitioner was not pursuing a remedy before a wrong forum. The writ court petition was not dismissed on account of want of jurisdiction or any other cause of like nature, but the prayers were rejected on merits.

15. Reliance was placed on the following decisions:-

(a) Consolidated Engineering Enterprises vs Principal Irrigation Department reported in ***(2008) 7 SCC 169***,

(b) Haryana State Cooperative Labour and Construction Federation Limited vs Unique Cooperative Labour and Construction Cooperative Society Limited and Anr. reported in ***(2018) 14 SCC 248***,

(c) Sesh nath Singh & Anr. vs Baidyabati Seoraphuli Cooperative Bank Limited & Anr. reported in ***(2021) 7 SCC 313***.



16. According to Mr. Gupta, the exclusion of time as contemplated under Section 14 of the Limitation Act, would not be applicable in the facts of the present case.

17. Reliance was placed on paragraphs 16, 17 and 18 of the order dated June 27, 2023, passed in FMA 1400 of 2017, in support of the contention that the Division Bench had dealt with the subject matter of the dispute. Paragraph 18 of the decision of the Hon'ble Division Bench was specially emphasized. It was urged that the Division Bench held that, the rejection of the claim by the learned single Judge in the writ petition, was proper. Thus, the petitioner could not invoke arbitration on the self-same cause of-action, for further determination of the claim for extra work which had been rejected in the writ proceeding and ultimately by the Hon'ble Supreme Court. With regard to the observation of the Hon'ble Supreme Court and the liberty allegedly granted, it was submitted that such liberty was always subject to the applicable laws. The liberty could not mean that the laws of limitation, the doctrine of res judicata, estoppel and any other similar principle would not be applicable. Lastly, it was urged that, the referral court should not exercise its power under Section 11(6) of the said Act, when the existence of the arbitration clause in respect of the self-same claim was denied by the petitioner in other proceedings.

18. The question, therefore, is whether in the above background, this court should refer the dispute to arbitration.

19. It is an admitted position that a litigation was continuing between the parties for a long time and the respondent had always refused to pay for the alleged extra work involving hard rock excavation. Thus, the conciliation clause



has now become redundant. The court is of the view that any further direction for settlement of the dispute by conciliation, will be an empty formality. Reference is made to the decisions of ***Visa International Limited vs. Continental Resources (USA) Limited*** reported in (2009) 2 SCC 55 and ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited*** reported in (2015) 13 SCC 610.

20. The relevant paragraph of ***Visa International (supra)*** is quoted below:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

21. The relevant paragraph of ***Demerara Distilleries (supra)*** is quoted below:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator



under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked.”

22. Undoubtedly, the parties agreed to refer disputes arising out of the contract to arbitration, in the event conciliation failed. The arbitration clause is quoted below:-

“Any disputes differences, whatsoever, arising between the parties out of relating to the construction, meaning, scope, operation or effect of this Contract shall be settled between the Employer and the Contractor amicably. If however, the Employer and the Contractor are not able to resolve their disputes/ differences amicably as aforesaid the said disputes/ differences shall be settled by Conciliation, failing which, through Arbitration.

Conciliation shall be resorted to prior to invoking Arbitration. The applicable rules for conciliation preceeding shall be that of "SCOPE Forum of Conciliation and Arbitration " (SCFA). The Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings.

The Arbitration shall be governed in accordance with Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"). The language of Arbitration shall be English.

Arbitration shall be governed by the Rules of Indian Council of Arbitration (ICA)/"SCOPE" Forum of Conciliation and Arbitration (SCFA) as agreed by the Party. The Venue shall be New Delhi.



During the pendency of the Conciliation or Arbitration proceedings both the parties (i.e. the Contractor and the Employer) shall continue to perform their contractual obligations.

The Arbitral Tribunal shall give reasons for its Award. The Tribunal shall apportion the cost of Arbitration between the parties, the award rendered in any Arbitration hereunder shall be final and binding upon the parties.

The parties agree that neither party shall have any right to commence or maintain any suit or legal proceeding concerning any dispute under this Agreement until the dispute has been determined in accordance with the Arbitration proceeding provided for herein and then only to enforce or facilitate the execution of an award rendered in such Arbitration.

The Court of Assansol, West Bengal India (with exclusion of all other Courts) shall have exclusive jurisdiction over all matters of dispute”

23. It appears that the parties agreed to be governed either by the ICA rules or SCFA rules and the venue in such case would be New Delhi. Admittedly, the parties did not agree to be guided by the rules of either of the institutional arbitration. The jurisdiction clause provided that courts of Asansol, West Bengal would have exclusive jurisdiction. The entire cause of action arose within the jurisdiction of West Bengal. Thus, as the mechanism for settlement of dispute by an arbitrator failed, and the cause of action arose within West Bengal, this court has jurisdiction to entertain this application.

24. The contention of Mr. Gupta that, Section 14 of the Limitation Act would not be applicable as the petitioner was not pursuing its remedy in a wrong forum, is now dealt with. Mr. Gupta urged that, the rejection of the writ petition and the dismissal of the appeal were not on the ground of lack of jurisdiction or any other similar clause. The relevant paragraphs were also relied upon by Mr. Gupta in support of the contention that, each and every factual matter with regard to the claim of the petitioner was placed before the courts in detail and the courts had specifically denied the entitlement of the



petitioner to the money claim for the extra work. In this connection, it would be prudent to refer to the order dated July 14, 2017 passed in WP 17280(W) of 2017. The contention of the learned Advocate for the petitioner before the writ court was that, the work did not come within the scope of the contract and as such, the arbitration clause would not be binding. However the learned Single Judge found that disputed questions of facts were involved and the questions raised by the petitioner with regard to non-payment for the additional work undertaken by the petitioner, fell within the purview of contractual obligations. As such, it was observed that the writ court was not in a position to entertain such disputed questions. The relevant paragraph is quoted below:-

“The petitioner and the respondent no.2 had entered into a commercial contract. The impugned memo is dated January 30, 2015. By such memo, the respondent no.2 had sought to repudiate the contract. There are disputed questions of facts involved. One of the issues raised is whether or not the additional work undertaken by the petitioner comes within the purview of the contract or not. As a writ Court I am not minded to enter into such disputed questions of facts on affidavit.”

25. The Hon’ble Division Bench, by the order dated June 27, 2023, held that the existence of a right and infringement thereof were the foundations for exercise of jurisdiction under Article 226 of the Constitution of India. Matters relating to tenders could not be tested by running a fine toothed comb through the decision making process of the authority, to discover which ‘i’ had been dotted and which ‘t’ had been crossed. The conditions incorporated in the contracts were to be treated together and not in isolation. A particular clause could not be picked up and highlighted. According to the Division Bench, the materials on record indicated that the contractors were asked to visit the site, examine the actual ground conditions and its local features, before submitting



their offer. The respondent appointed MECON as a project consultant. The claim was not found to be tenable by the consultant and reasons were also provided. The claim for extra work that was submitted by ION was approved about four years prior to the rejection of the claim of the petitioner. There were no contemporaneous correspondence during the said period from the end of the petitioner, with regard to the amount claimed by the petitioner. The Division Bench observed that appropriate standards of probity and accountability would be required in order to determine the issue involved. The claim of the petitioner was against a public authority and the same was required to be categorically established by evidence. Under such circumstances, in the opinion of the Division Bench, the prayer of the petitioner was rightfully rejected by the learned writ court. It was held that no mala fide could be attributed to the exercise of jurisdiction by the authorities, in rejecting the claim.

26. This Court finds that, before the Division Bench, the petitioner failed to establish arbitrariness and unreasonableness on the part of the respondent in rejecting the claim. Admittedly, the writ petition and the appeal were dismissed on the ground that, adjudication would involve appreciation of evidence. The relevant paragraphs of the order of the Division Bench are quoted below:-

“17. The existence of a right and infringement thereto are the foundation of exercise of jurisdiction under Article 226 of the Constitution of India. Tender matters are not tested by running a fine tooth-comb over the process to discover which ‘i’ has not been dotted and which ‘t’ has not been crossed. The conditions incorporated in the contract agreement need to be considered together and not in isolation. A particular clause cannot be picked up and highlighted. It appears from the materials on record that specific instructions were given to the contractors to ascertain themselves by visiting the site the actual site conditions and



local factors before submitting their offer and it was specifically stated that no extra claim on account of site conditions and local factors would be admissible during execution of the contract. The contract document also appointed MECON as the project consultant. The appellants' claim was found to be not tenable by the said consultant and the reasons thereof were also disclosed in the resolutions adopted by the appropriate authority. The claim for extra work submitted by ION was approved about four years prior to rejection of the appellants' claim. There was no contemporaneous correspondence during the said period by the appellants. As regards the amount payable to the appellant for alleged extra work, appropriate standards of probity and accountability is required to be on record. As the appellant's claim is in respect of public money of a State instrumentality, the same needs to be categorically established and this Court cannot come to any conclusion, in the absence of appropriate evidence on record. The judgments upon which reliance has been placed by the appellants are all distinguishable on facts.

18. From the sequence of facts it is explicit that the appellants' claim was not abruptly rejected. The issue was deliberated upon and discussed in the meetings of various authorities. There is also no error in the decision making process. Invitation to tender is in the realm of contract. It is not a case that the final decision was taken by the authorities in a perfunctory manner. No mala fide can be attributed to such action of the authorities. The appellants have also failed to establish any arbitrariness or unreasonableness against the respondents.”

27. This court, prima facie, finds that the Division Bench was of the specific view that without weighing the evidence, the claim of the petitioner could not be determined. The dispute was within the realm of contractual obligation. The claim was rejected on the ground that the petitioner had failed to prove that the respondent had rejected the claim in an arbitrary and unreasonable manner. The scope of entertainability of a writ petition was discussed, but the Hon'ble Division Bench neither adjudicated the validity nor the admissibility of the claim. The tenor of the orders of the Single Bench and the Division Bench were that the dispute was in the realm of contractual obligations, and depended on interpretation of the terms of the contract. The decision of the respondent was



tested on the touchstone of Article 14. It was held that in view of the factual disputes, a deeper probe would be necessary to arrive at a finding on such claim, which could not be done by a writ court. The rejection by the authority was upheld on the ground that the decision making process could not be flawed. The question whether the claim of the petitioner was invalid, had not been decided. The Hon'ble Supreme Court recorded that in the writ petition before the High Court, the petitioner raised disputed questions of fact with regard to the entitlement of the petitioner to receive payment for the extra work of removal of hard rock. Although, it was observed that the rejection of the writ petition could not be faulted, the Hon'ble Supreme Court recorded that there was an arbitration agreement and it would be open to the petitioner to pursue such alternative remedy in accordance with law.

28. Thus, the tenor of the orders passed earlier was that the dispute arose out of a contract entered into between the parties, which involved interpretation of the contractual terms and weighing of evidence, and such questions were beyond the scope of judicial review of the decision making process. The decision of the Hon'ble Supreme Court was that, in view of the arbitration agreement between the parties, the petitioner should pursue the alternative remedy in accordance with the law. The Hon'ble Supreme Court was of the prima facie view that, the dispute in this regard should be settled by arbitration. Mr. Gupta's contention was that, the observation of the Hon'ble Supreme Court was qualified by the expression "in accordance with law" which could not be ignored. In my view, the arbitral tribunal should be the forum to



apply the principles of law pertaining to limitation, res judicata estoppel etc. as urged by the respondent, and not the referral court.

29. With regard to the question of applicability of the doctrine of res judicata this court, prima facie, finds that none of the courts decided the admissibility of the claim. Rather, the courts held that the petitioner failed to establish unreasonableness or arbitrariness in the decision of the authority and disputed questions of fact, could not be decided in the writ petition. That, there was no corroborating evidence to support the allegation of discrimination against the petitioner. The writ court could not go beyond what was pleaded. The courts were alive to the fact that the questions involved in the writ petition were matters of evidence. The Hon'ble Supreme Court expressed a view that, the petitioner had the alternative remedy to approach the arbitrator in view of the arbitral clause. Such liberty was granted subject to the laws applicable. The learned Arbitrator should decide whether the claim is barred by res judicata or issue estoppel.

30. In the matter of ***Parsvnath Developers Ltd. and Anr. v. Rail Land Development Authority***, reported in ***2018 SCC OnLine Del 12399***, the Delhi High Court held as follows:-

“8. I have considered the submissions made by the counsels for the parties. It cannot be denied that there was an Arbitration Agreement between the parties in the Development Agreement. It is also a matter of fact that the petitioners have invoked the said Arbitration Agreement on more than one occasion. It can also not be denied that the petitioners had pleaded for reservation of its rights to claim further amounts in the second arbitration proceedings which have resulted in the Arbitration Award dated 25.11.2017. The question whether the claims now sought to be raised by the petitioners would be barred by the principles of Order II Rule 2 of CPC or on the ground of res judicata or estoppel, in my opinion,



are questions on the merit of the claim of the petitioner and defence of the respondent. These questions are to be determined by the Arbitral Tribunal alone on the basis of the pleadings and/or evidence led by the parties on these issues.

9. Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in SBP & CO. v. Patel Engineering Ltd., (2005) 8 SCC 618, to contend that the power exercised by this Court is a judicial power and, therefore, this Court must determine whether the Arbitration Agreement ceases to exist upon passing of the Award dated 25.11.2017.

10. In my opinion, the existence of the Arbitration Agreement itself is not in dispute. The dispute is whether the claim now sought to be raised by the petitioner would be barred by the principles of Order II Rule 2 of the CPC and/or principles of res judicata and/or estoppel. It cannot be denied that an Arbitration Agreement can be invoked a number of times and does not cease to exist only with the invocation for the first time. The Supreme Court in Dolphin Drilling Ltd. v. Oil and Natural Gas Corporation Ltd., (2010) 3 SCC 267, has held as under:

“8. The plea of the respondent is based on the words “all disputes” occurring in Para 28.3 of the agreement. Mr. Aggrawal submitted that those two words must be understood to mean “all disputes under the agreement” that might arise between the parties throughout the period of its subsistence. However, he had no answer as to what would happen to such disputes that might arise in the earlier period of the contract and get barred by limitation till the time comes to refer “all disputes” at the conclusion of the contract. The words “all disputes” in Clause 28.3 of the agreement can only mean “all disputes” that might be in existence when the arbitration clause is invoked and one of the parties to the agreement gives the arbitration notice to the other. In its present form Clause 28 of the agreement cannot be said to be a one-time measure and it cannot be held that once the arbitration clause is invoked the remedy of arbitration is no longer available in regard to other disputes that might arise in future.”

11. The question whether the claim of the petitioner would be barred by the principles of res judicata or estoppel or by Order II Rule 2 of the CPC are not matters to be considered by this Court while exercising its jurisdiction under Section 11 of the Act. (Indian Oil Corporation Ltd. v. SPS Engineering Ltd., (2011) 3 SCC 507)).

12. The legislature by amending the Act by way of the Arbitration and Conciliation (Amendment Act) 2015 and the insertion of Section 11(6A) of the Act has also restricted the scrutiny of the Court at the stage of adjudicating an application under Section 11 of the Act only to the existence of the Arbitration Agreement.

13. In view of the above, I see no impediment in appointing a nominee Arbitrator for the respondent to adjudicate the disputes that are sought



to be raised by the petitioners in relation to the abovementioned Development Agreement. In such proceedings, all objections of the respondent shall remain open and it would be for the Arbitral Tribunal to decide the same, may be as primary issues.”

31. In the matter of ***Subodh Parkash vs Rajiv Gaddh***, reported in **2024:PHHC:146097**, the High Court of Punjab and Haryana held as follows:-

“7 In Parsvnath Developers Limited & Anr. Versus Rail Land Development Authority, 2020 (3) ArbiLR 536, High Court of Delhi has observed that the issue of res judicata or claims being barred under the principles of Order 2, Rule 2, CPC touch upon the merits of the claim and can be decided only by the Arbitral Tribunal. The power under Section 11 (6) of the Arbitration Act is only restricted to examining the existence of the arbitration clause. The objection raised by the respondent requiring the High Court to examine whether the disputes sought to be raised are overlapping with the claims raised before other fora cannot be sustained. Issues clearly fall within the domain of the Arbitral Tribunal and would be decided if and when raised by the respondent.”

32. In the matter of ***Gannon Dunkerley and Company Limited vs Union of India Ministry of Road Transport and Highways***, reported in **2024:DHC:2663**, the Delhi High Court held as follows:-

“36. The petitioner further states that it is settled law that whether the claims of the petitioner would be barred by the principles of res-judicata or estoppel are not matters to be considered by this court while exercising jurisdiction under section 11 of the Arbitration and Conciliation Act, 1996. Reliance is placed on Prasvnath Developers Limited and Anr. v Rail Land Development Authority, Arb. P. No. 724/2018 dated 31.10.2018. The operative portion reads as under:-

" 11. The question whether the claim of the petitioner would be barred by the principles of res judicata or estoppel or by Order II Rule 2 of the CPC are not matters to be considered by this Court while exercising its jurisdiction under Section 11 of the Act. (Indian Oil Corporation Ltd. vs. SPS Engineering Ltd. (2011) 3 SCC 507)).

12. The legislature by amending the Act by way of the Arbitration and Conciliation (Amendment Act) 2015 and the insertion



of Section 11(6A) of the Act has also restricted the scrutiny of the Court at the stage of adjudicating an application under Section 11 of the Act only to the existence of the Arbitration Agreement."

33. Thus, whether the principles of *res judicata* and estoppel apply, are within the domain of the arbitrator.

34. Reference is made to the decision of **Goqii Technologies Private Limited vs Sokrati Technologies Private Limited** reported in **2024 INSC 853**. the Hon'ble Supreme Court held as follows:-

"20. Before we conclude, we must clarify that the limited jurisdiction of the referral Courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration. With a view to balance the limited scope of judicial interference of the referral Courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine."

35. In the decision of **SBI General Insurance Co. Ltd. vs Krish Spinning** reported in **2024 SCC Online SC 1754**, the Hon'ble Supreme Court held as follows:-

"92. The position that emerges from the aforesaid discussion of law on the subject as undertaken by us can be summarised as follows:—

- i. There were two conflicting views which occupied the field under the Arbitration Act, 1940. While the decisions in Damodar Valley (supra) and Amar Nath (supra) took the view that the disputes pertaining to "accord and satisfaction" should be left to the arbitrator to decide, the view taken in P.K. Ramaiah (supra) and Nathani Steels (supra) was that once a "full and final settlement" is entered into between the parties,



- no arbitrable disputes subsist and therefore reference to arbitration must not be allowed.
- ii. Under the Act, 1996, the power under Section 11 was characterised as an administrative one as acknowledged in the decision in Konkan Railway (supra) and this continued till the decision of a seven-Judge Bench in SBP & Co. (supra) overruled it and significantly expanded the scope of judicial interference under Sections 8 and 11 respectively of the Act, 1996. The decision in Jayesh Engineering (supra) adopted this approach in the context of “accord and satisfaction” cases and held that the issue whether the contract had been fully worked out and whether payments had been made in full and final settlement of the claims are issues which should be left for the arbitrator to adjudicate upon.
 - iii. The decision in SBP & Co. (supra) was applied in Boghara Polyfab (supra) and it was held by this Court that the Chief Justice or his designate, in exercise of the powers available to them under Section 11 of the Act, 1996, can either look into the question of “accord and satisfaction” or leave it for the decision of the arbitrator. However, it also specified that in cases where the Chief Justice was satisfied that there was indeed “accord and satisfaction”, he could reject the application for appointment of arbitrator. The prima facie standard of scrutiny was also expounded, stating that the party seeking arbitration would have to prima facie establish that there was fraud or coercion involved in the signing of the discharge certificate. The position elaborated in Boghara Polyfab (supra) was adopted in a number of subsequent decisions, wherein it was held that a mere bald plea of fraud or coercion was not sufficient for a party to seek reference to arbitration and prima facie evidence for the same was required to be provided, even at the stage of the Section 11 petition.
 - iv. The view taken by SBP & Co. (supra) and Boghara Polyfab (supra) was seen by the legislature as causing delays in the disposal of Section 11 petitions, and with a view to overcome the same, Section 11(6-A) was introduced in the Act, 1996 to limit the scope of enquiry under Section 11 only to the extent of determining the “existence” of an arbitration agreement. This intention was acknowledged and given effect to by this Court in the decision in Duro Felguera (supra) wherein it was held that the enquiry under Section 11 only entailed an examination whether an arbitration agreement existed between the parties or not and “nothing more or nothing less”.
 - v. Despite the introduction of Section 11(6-A) and the decision in Duro Felguera (supra), there have been diverging views of this Court on whether the scope of referral court under Section



11 of the Act, 1996 includes the power to go into the question of “accord and satisfaction”. In *Antique Art* (supra) it was held that unless some prima facie proof of duress or coercion is adduced by the claimant, there could not be a referral of the disputes to arbitration. This view, however, was overruled in *Mayavati Trading* (supra) which reiterated the view taken in *Duro Felguera* (supra) and held that post the 2015 amendment to the Act, 1996, it was no more open to the Court while exercising its power under Section 11 of the Act, 1996 to go into the question of whether “accord and satisfaction” had taken place.

- vi. The decision in *Vidya Drolia* (supra) although adopted the view taken in *Mayavati Trading* (supra) yet it provided that in exceptional cases, where it was manifest that the claims were ex facie time barred and deadwood, the Court could interfere and refuse reference to arbitration. Recently, this view in the context of “accord and satisfaction” was adopted in *NTPC v. SPML* (supra) wherein the “eye of the needle” test was elaborated. It permits the referral court to reject arbitration in such exceptional cases where the plea of fraud or coercion appears to be ex-facie frivolous and devoid of merit.

93. Thus, the position after the decisions in *Mayavati Trading* (supra) and *Vidya Drolia* (supra) is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the Act, 1996, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex-facie frivolous and non-arbitrable.

iii. What is the effect of the decision of this Court in *In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act 1899* on the scope of powers of the referral court under Section 11 of the Act, 1996?

94. A seven-Judge Bench of this Court, in *In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899* reported in 2023 INSC 1066, speaking eruditely through one of us, Dr Dhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in *In Re : Interplay* (supra) are extracted hereinbelow:

“179. [...] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which



renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.

XXX XXX XXX

“129. *Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.*

130. *On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, are under a duty to "prima-facie examine and reject non -arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process."*

131. *Our findings on both the aforesaid Issues have been summarised in paragraph 89 of the said decision thus:-*

"89. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration. the court may refuse to appoint an arbitral tribunal."

132. *Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia (supra) and NTPC v. SPML (supra). However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in In Re: Interplay (supra).*

133. *Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11 (6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in In Re: Interplay (supra).*



XXXXXXX

185. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obliging the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.

186. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the arbitral tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

- a. If an application for interim measures is filed under Section 9 of the Arbitration Act; or
- b. If the award is challenged under Section 34.

Issues which concern the payment of stamp-duty fall within the remit of the arbitral tribunal. The discussion in the preceding segments also make it evident that courts are not required to deal with the issue of stamping at the stage of granting interim measures under Section 9.”

36. Hence, the Hon’ble Supreme Court held that if the arbitrator finds that a party was unnecessarily dragged into a prolonged adjudicatory process, he may be compensated with cost. In the decision of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*** reported in **(2024) 6 SCC 1**, the Hon’ble Supreme Court discussed the scope of interference by a referral court and held that the referral court was entitled to cause a, prima facie, examination with regard to existence



of an arbitration clause.. The relevant paragraphs of **Interplay** (supra) are as follows :-

“114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

xxx xxx xxx

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.

xxxxxxxxxxxxxx

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

*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]”

37. Reference is made to the decision of the Hon’ble Supreme Court in ***Aslam Ismail Khan Deshmukh vs ASAP Fluids Private Limited and Another*** reported in **(2025) 1 SCC 502**. The relevant part is quoted below:-

“50. As evident from the aforesaid discussion and especially in light of the observations made in *Krish Spg.* [*SBI General Insurance Co. Ltd. v. Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.

51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through “accord and satisfaction”, or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.

52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.”



38. In the matter of ***Adavya Projects Pvt. Ltd. vs M/s Vishal Structutals Pvt. Ltd. and Ors.*** reported in **2025 INSC 507**, the Hon'ble Supreme Court held as follows:-

“40. Summary of Conclusions: Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:

I. A notice invoking arbitration under Section 21 of the ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings.

II. The purpose of an application under Section 11 is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.”

39. In ***Arif Azim Company Limited vs Aptech Limited*** reported in **(2024) 5 SCC 313**, it was held that:-

“27. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review [VidyaDrolia case, (2021) 2 SCC 1, para 134] and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. [VidyaDrolia case, (2021) 2 SCC 1, para 154.4] The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. [Nortel Networks case, (2021) 5 SCC 738, para 47] On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration [VidyaDrolia case, (2021) 2 SCC 1, para 154.4] .



28. The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non-arbitrable [VidyaDrolia case, (2021) 2 SCC 1, para 154.4] . It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources [VidyaDrolia case, (2021) 2 SCC 1, para 139] . Further, as noted in VidyaDrolia [VidyaDrolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court [VidyaDrolia case, (2021) 2 SCC 1, para 139] . Therefore, this Court or a High Court, as the case may be, while exercising jurisdiction under Section 11(6) of the Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator, as explained in DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd. [DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd., (2021) 16 SCC 743, paras 22 & 26]”

40. Having considered the above decisions, this court is of the view that, a deeper probe into the documents relied upon in the writ petition and in the appeals, will not be proper. The same would amount to a mini trial by the referral court. Secondly, as soon as the liberty was granted by the Supreme Court, the arbitration clause was invoked and the application before this court was filed within time. This is not a case in which the court can come to a conclusion that the claim is inadmissible upon taking a cursory look at the pleading.

41. The application of section 14 of the Limitation Act cannot be restricted only to a civil suit, but can be resorted to in respect of proceedings before tribunals and writ courts. Whether the period consumed before the writ court and up to the Supreme Court should be excluded while computing the limitation, must be decided by the learned Arbitrator. In any event, when



limitation is a mixed question of law and fact, the same should be determined by the learned arbitrator.

42. The law is well-established that Section 14 cannot be limited only to situations when a party had approached a wrong forum which could not take up the matter due to lack of jurisdiction or any other cause of like nature, bordering on jurisdictional incapacity. The expression should be given a liberal construction. The writ court and the Hon'ble Division Bench found that the claim could not be decided without evidence as the issues involved would require an interpretation of the contract and scope of the contract. The inhibition to allow the writ petition was something akin to inability of a writ court to hold a trial on evidence by a writ court.

43. In the decision of ***M.P. Steel Corpn. v. CCE***, reported in **(2015) 7 SCC 58**, the Hon'ble Supreme Court held as follows:-

“50. Section 14 has been interpreted by this Court extremely liberally inasmuch as it is a provision which furthers the cause of justice. Thus, in Union of India v. West Coast Paper Mills Ltd. [(2004) 3 SCC 458] , this Court held : (SCC p. 464, para 14)

14. “... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be ‘defect of jurisdiction or other cause of a like nature’ within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression ‘other cause of like nature’ came up for the consideration of this Court in Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases



where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.”

44. In the decision of ***Gimpex Private Ltd. v. Manoj Goel***, reported in **(2022) 11 SCC 705**, the Hon’ble Supreme Court held that a civil proceeding will also include a writ petition filed under Article 226 of the Constitution:-

“**28.** The nature of the offence under Section 138 of the NI Act is quasi-criminal in that, while it arises out of a civil wrong, the law, however, imposes a criminal penalty in the form of imprisonment or fine. The purpose of the enactment is to provide security to creditors and instil confidence in the banking system of the country. The nature of the proceedings under Section 138 of the NI Act was considered by a three-Judge Bench decision of this Court in *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.* [*P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818], where R.F. Nariman, J., after adverting to the precedents of this Court, observed that : (SCC p. 317, para 53)

“53. A perusal of the judgment in *Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818]* would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a “civil sheep” in a “criminal wolf’s” clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.”



45. In the decision of ***Laxmi Srinivasa R and P Boiled Rice Mill vs State of Andhra Pradesh and Another***, reported in **2022 SCC Online SC 1790**, the Hon'ble Supreme Court held as follows:-

“4. In the facts of the present case, we find that the period from the date of filing of the writ petition on 24.02.2018 and the date on which it was dismissed as not entertained viz. 07.03.2018, should have been excluded. The writ proceedings were maintainable, but not entertained. Bona fides of the appellant in filing the writ petition are not challenged. Further, immediately after the dismissal of the writ petition, the appellant did file an appeal before the Appellate Authority. On exclusion of the aforesaid period, the appeal preferred by the appellant would be within the condonable period. Accordingly, we direct that the application for condonation of delay filed by the appellant would be treated as allowed. The delay is directed to be condoned.”

46. In the decision of ***Kirpal Singh vs Government of India, New Delhi & Ors.*** reported in **2024 INSC 944**, the Hon'ble Supreme Court held that Section 14 of the Limitation Act would apply to proceedings under Section 34 of the Arbitration and Conciliation Act:-

“6. Mr. Gaurav Agarwal, learned Senior Advocate appearing for the appellant has submitted that his client is entitled to the exclusion of period from 20.10.2011 to 20.01.2012 under Section 14 of the Limitation Act. For this purpose, he relied on the judgment of this Court in ***Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others*** reported in **2008 (7) SCC 169**. The relevant portion of the judgment is quoted hereunder:

“23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the said Act..... Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the



court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.”

* * *

* * *



9. Having considered the matter in detail, we are of the opinion that the issue is covered by the decision of this court in ***Consolidated Engg. Enterprises v. Principal Secretary, Irrigation Dept. (supra)***.

10. We may hasten to add that when the substantive remedies under Sections 34 and/or 37 of the Arbitration Act are by their very nature limited in their scope due to statutory prescription, it is necessary to interpret the limitation provisions liberally, or else, even that limited window to challenge an arbitral award will be lost. The remedies under Sections 34 and 37 are precious. Courts of law will keep in mind the need to secure and protect such a remedy while calculating the period of limitation for invoking these jurisdictions.

11. Applying Section 14 of the Limitation Act, we hold that there is sufficient cause for excluding the period commencing from 20.10.2011 to 23.02.2012. In view of the fact that this period is excluded, the appellant will be entitled to the statutory remedy under Section 34 of the Act.”

47. In the matter of ***United India Insurance Co. Ltd. vs J.A. Infra Structure Pvt. Ltd.*** reported in ***(2006) Supp 5 SCR 638***, the Hon’ble Supreme Court held as follows:-

“8. In the result, this Court was of the opinion that the view taken by the court below excluding the applicability of Section 14 in the said proceeding was not correct. This Court held that Section 14 of the Limitation Act, 1963 was applicable in the Arbitration and Conciliation Act, 1996 and accordingly this Court set aside the judgments and order and remanded the matters back to the District Court for deciding the application under Section 14 of the Limitation Act on merit. In view of the Judgment in State of Goa vs. M/s. Western Builders (supra), the counsel for the respondent has not seriously opposed to the applicability of Section 14 of the Limitation Act which deals with exclusion of time spent in prosecuting the remedy before the wrong forum bona fide. Therefore, we set aside the order passed by the High Court and remit the matter back to the District Court, Nagpur to decide the objections raised by the appellant-Insurance Company under Section 34(3) of the Arbitration and Conciliation Act, 1996 and decide the same on merit after affording opportunity to the respondent herein.”



48. The decision of this Court in ***NC Construction vs Union of India and ors.*** decided in ***A.P. (COM) 120 of 2025***, which has been cited by Mr. Gupta is not applicable in the facts of this case, inasmuch as, in the cited case, the Court found the claim to be manifestly deadwood. The bills were submitted in April, 2010 and the demand for the first time was made in 2017, and thereafter in 2020 and 2024. All the notices disclosed the intention of the petitioner therein to go for arbitration, but the petitioner did not take steps.

49. The decision in ***Consolidated Engineering Enterprise*** (supra) will not be applicable at this stage. In a later decision, the Hon'ble Supreme Court laid down that, the applicability of section 14 of the Limitation Act had not been excluded under the Arbitration and Conciliation Act, 1996 and the legislative intent was to apply the provisions of the Limitation Act to all proceedings under the Arbitration and Conciliation Act. Moreover, applicability or inapplicability of the provisions of section 14 of the Limitation Act, should be adjudicated by the Arbitrator.

50. In the decision of ***Haryana State Cooperative Labour and Construction Federation Limited*** (supra) the Hon'ble Supreme Court held that in order to bring a case within the ambit of section 14 of the Limitation Act, certain conditions must be fulfilled, namely, that the previous suit was being prosecuted with due diligence and in good faith; that the matter in issue in previous suit and the new suit were the same; that the Court was unable to entertain the suit on account of the defect of jurisdiction or cause of like nature. In the case before the Hon'ble **Supreme** Court, none of the referred



conditions had been fulfilled by the applicant during the period which was spent in prosecuting litigations before other courts. Moreover, the matter was with regard to condonation of delay in filing an application under section 34 of the 1996 Act and not at the stage of reference.

51. The decision in **Sesh nath Singh and Another** (Supra) laid down that the expression “Court” in section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal or forum under the SARFAESI ACT. The said judgment does not come to the aid of the respondent.

52. With regard to the admissibility of the claim and scope of the work, the arbitrator is the appropriate authority to determine and interpret the clauses of the contract. Interpretation of contract and validity of claims are to be decided by the arbitrator. The arbitrator is the master of facts.

53. Thus, in my view, when the existence of the arbitration clause is not in dispute and there is no final determination as to the validity of the claim of the petitioner, but only rejection of the writ petition and the appeals on the grounds that the matter could not be decided without evidence as contractual obligations were involved, the dispute must be referred. Whether the dispute is non-arbitrable in view of the applicability of the doctrine of res judicata or estoppel, whether the claim is barred by limitation, whether the period between filing of the writ petition and the dismissal of the SLP by the Hon’ble Supreme Court should be excluded in computing the period of limitation etc., must also be decided by the learned arbitrator on evidence. The referral court should not venture into this territory. It is the duty of the referral court to uphold party autonomy by giving credence to the arbitration agreement. The parties had



already agreed and intended to get all their disputes settled by a learned arbitrator, in case conciliation failed.

54. The application is thus, allowed, the dispute is referred to the sole arbitrator, Mr. Samrat Sen, learned Senior Advocate, Bar Library Club.

55. The learned arbitrator shall apply provision of Section 12 of the Arbitration and Conciliation Act. The learned arbitrator will fix his own remuneration in accordance with the provisions of the schedule of the Act.

56. Under such circumstances, AP-COM/461/2024 is, accordingly, disposed of.

57. No order is passed as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)