



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

Reserved on: 18.12.2025

Pronounced on: 26.12.2025

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

Arb P. No.27/2025

M/S SOHRAB IQBAL GONI (JV)

...PETITIONERS/APPELLANT(S)

Through: - Mr. Azhar-ul-Amin, Advocate.

Vs.

DIRECTOR, TRANSPORT J&K ECONOMIC
RECONSTRUCTION AGENCY

...RESPONDENT(S)

Through: - Mr. Waseem Gull, GA.

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

JUDGMENT

1) The petitioner through the medium of present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"), has sought appointment of Arbitrator to adjudicate the disputes between the petitioner and the respondents arising out of agreement dated 9th April, 2008.

2) The brief facts leading to the filing of the present petition are that the respondent Economic Reconstruction Agency (for short "ERA") on behalf of the Government of J&K invited bids from eligible contractors for construction



of 54 meter span bridge over Ferozpora Nalla at Chanapora Kunzar. In response to the said tender notice, the petitioner submitted his bid. The same was found lowest and was accepted by the respondents, as a consequence whereof agreement dated 9th April, 2008 came to be executed by the parties. The date of commencement of the work was fixed as 28 days later.

3) It appears that during construction of the bridge, disputes arose between the parties over the alleged delay in completion of the bridge as also its alleged faulty design. The contract was foreclosed, whereafter the petitioner issued termination notice in January, 2015 invoking Clause 6.2 of the General Conditions of the Contract (GCC). The petitioner claimed that the respondents have unilaterally and arbitrarily foreclosed the contract and deprived him of his legitimate profits and investments along with liquidated and unliquidated damages.

4) It appears that after the disputes arose between the parties, the High Court in terms of order dated 2nd July, 2018 passed in A.A No.16/2014, appointed Shri Abdul Rashid Malik, District & Sessions Judge, as Sole Arbitrator to decide the disputes that had arisen between the parties in relation to the agreement in question.



5) Before the learned Arbitrator, the petitioner/claimant filed its statement of claims in which it claimed that it is entitled to an amount of Rs.26,52,37,347/ on account of ten claims, the detail whereof are given as under:

- i) *Claim for earth work in construction of diversion for an amount of Rs. 4708611/-.*
- ii) *Claim for haltag and losses due to steal issue raised by the Engineer In-charge for an amount of Rs. 8408880/-*
- iii) *Claim for losses due to unprecedented flood of 2010 for an amount of Rs.45164486/-.*
- iv) *Claim for payments withheld in IPC 9th by illegally tempering with variation and losses to the same for an amount of Rs. 38995026/-.*
- v) *Claim on account of loss of profit in new work which was fraudulently taken away and subsequent proceedings of termination of contract by the claimant for an amount of Rs. 12723751/-.*
- vi) *Claim for labour cess deducted arbitrarily and illegally from our running bills for an amount of Rs. 877722/-.*
- vii) *Claim for losses suffered due to arbitrary deduction of liquidity damages from claimant running bills and other illegally withheld money in form of cash and Bank guarantees for performance security and retention money for an amount of Rs. 20221296/-.*
- viii) *Claim for various losses incurred on account of delays not attributable to the claimant for an amount of Rs. 117045084/-.*
- ix) *Claim for losses due to non issuance of essentially certificates by respondents for an amount of Rs. 7092491/-.*
- x) *Claim for non-performance and breach of contract on part of the respondent for an amount of Rs. 265237347/-.*



6) The respondents filed their statement of defence and also raised three counter claims. On account of first counter claim, the respondents claimed an amount of Rs.1.00 crores against the petitioner/claimant in accordance with Clause 2.5 of the GCC. The second counter claim to the tune of Rs.7,18,492/ relates to salary of the staff of the employer and the third counter claim pertained to fee of the Arbitrator.

7) The learned Arbitrator, after analysing the pleadings and oral as well as documentary evidence lead by the parties before him, passed a detailed award dated 21.01.2022. While making his award, the learned Arbitrator rejected all the claims of the petitioner/claimant excepting claim No.7, which relates to losses suffered due to deduction of liquidated damages from running bills of the claimant and money withheld in the form of cash and bank guarantees for performance, security and retention money. All the counter claims of the respondents were also rejected. Accordingly, the learned Arbitrator awarded an amount of Rs.63,13,511/ in respect of claim No.7 in favour of the petitioner/claimant along with interest @6% from the date of award till payment.

8) The aforesaid award dated 21.01.2022, came to be challenged by both the parties by way of separate petitions



under Section 34 of the Act of 1996 before Designated Commercial Court, Srinagar. The learned Commercial Court, vide order dated 24.04.2025, allowed both the petitions filed by the parties and set aside the award.

9) After setting aside of the award passed by the learned Arbitrator, the petitioner has moved the present petition before this Court seeking appointment of a fresh Arbitrator. It has been contended that underlying dispute between the parties is yet to resolved and the learned Designated Commercial Court has left it open to the parties to carry out further proceedings before the Arbitrator in future. It has been submitted that in tune with the observations of the learned Designated Commercial Court, the petitioner has served a notice upon the respondents requesting them to refer the disputes for arbitration in terms of Section 21 of the Act of 1996 but the respondents have failed to act under the terms of the contract compelling the petitioner to move the present petition.

10) The petition has been resisted by the respondents by filing objections thereto. It has been contended that most of the claims of the petitioner have been rejected by the learned Arbitrator because the same are frivolous in nature. It has been further submitted that there is no legal



foundation to the present petition and the same deserves to be dismissed.

11) I have heard learned counsel for the parties and perused record of the case including the award passed by the learned Arbitrator and the record of the Designated Commercial Court, Srinagar.

12) The question that poses itself for determination of this Court is as to whether in the face of the fact that pursuant to the first reference made to the arbitration which culminated into passing of an award and setting aside of the same under Section 34 of the Act of 1996, a request for second reference to arbitration is maintainable in the facts and circumstances of the case.

13) Learned counsel for the petitioner has, while pressing for reference of the disputes between the parties to arbitration once again, contended that underlying dispute between the parties has remained unresolved and because the learned Designated Commercial Court has left it open to the parties to take recourse to fresh arbitration, therefore, there is no legal impediment in referring the disputes to the arbitration once again for their complete and final resolution. He has relied upon the judgment of the Bombay High Court in the case of **Batliboi Environmental**



Engineering Ltd. vs. Hindustan Petroleum Corporation Limited (Arbitration Application No.338 of 2024 decided on 11.03.2025).

14) *Per contra*, learned counsel for the respondents has contended that the scope of jurisdiction under Section 11 of the Act of 1996 is materially different at pre-award and post-award stages. It has been contended that at the post-award stage, the Court has to take cognizance of earlier award and the judgment passed under Section 34 of the Act of 1996. It has been contended that mere setting aside of the award does not automatically revive a right to re-arbitrate. According to the learned counsel, in a case where Arbitral Tribunal has conclusively held a claim legally untenable and the Court under Section 34 of the Act of 1996 has not rendered any finding, the said claim is reduced to deadwood. It has been contended that in the present case, the claims of the petitioner were found to be untenable by the learned Arbitrator and no finding has been rendered on merits by the learned Designated Commercial Court, as such, the disputes between the parties cannot be again referred to arbitration. In support of his aforesaid contentions, the learned counsel for the respondents has placed reliance upon the judgment of Delhi High Court in the case of **Jaiprakash Associates**

Limited v. NHPC Limited, 2025 SCC OnLine Del 170.



15) It is a well settled principle of law that at the pre-award stage, the Court's scrutiny is extremely limited and the Court applies only a prima facie test about the existence of arbitration agreement and arbitrability of the disputes arising between the parties. Rejection of an application under Section 11 of the Act of 1996 at pre-award stage is confined to cases of manifest non-arbitrability. However, when a fresh petition under Section 11 of the Act of 1996 is made after the arbitral award has been set aside, the Court has to consider the award passed by the Arbitrator and the order that has been by the Court under Section 34 of the Act 1996 as also an order that may have been passed by the Court while exercising its appellate jurisdiction under Section 37 of the Act of 1996. So, at post-award stage, Referral Court has to take into account subsequent developments like the arbitral award and the orders passed by the Courts under Section 34/37 of the Act of 1996 and if after considering all these aspects, the Court considering the second reference is of the opinion that the underlying dispute between the parties has remained unresolved and the same is arbitrable, only then second reference is maintainable. On the other hand, if it is found that claims of the parties have been determined by the Arbitrator or by the Court exercising its powers under Section 34/37 of the Act of 1996 on their merits, then the situation may be

Arb. P No.27/2025



different and it may be a case where claims are reduced to deadwood, hence a second reference would not be maintainable.

16) The High Court of Delhi has, in the case of **Jaipraksh Associates Limited** (supra), which has been relied upon by the respondents, analysed the legal position on the aforesaid aspect of the matter in the following manner:

23. While this Court is conscious of the fact that the general rule favours referring disputes to arbitration, it is equally settled that "manifest injustice" remains a key exception to this rule. This Court is of the view that to realise the true and correct meaning to this Court's role of exercising its supervisory role under the Act of 1996, Referral Courts especially at the post-award stage must step in to prevent the arbitration process from being misused to perpetuate injustice. The concept of manifest injustice extends to scenarios where the dispute is so evidently flawed that it is clear that relegating the parties to arbitration would serve no purpose. The present matter is one such matter. Allowing such claims to go forward would be a waste of resources and an improper use of the arbitration process, which is meant to resolve only those disputes that are legally viable. The present matter falls in the category where "legitimate interference" is necessitated and to prevent wastage of public and private resources. Applying the "eye of the needle" test, this Court has no hesitation in observing that the prima facie scrutiny of the facts of the present case, leads to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable.

24. This Court is of the view that it is the duty of the Referral Court especially at the post award stage to protect the parties from



being forced to arbitrate when the matter is demonstrably non-arbitrable. This is more so also from the perspective that one of the primary rationale behind the enactment of the Act of 1996 was speedy justice and bringing a finality to an ongoing dispute i.e. there be an end to litigation even though a party may remain dissatisfied with the verdict. The Statement of Objects and Reasons reveal that the legislative intent of enacting the Act of 1996 was to provide parties with an efficient alternative dispute resolution system which gives litigants an expedited resolution of disputes while reducing the burden on the courts. 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.

25. This Court cannot be expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of an arbitrator, else in a situation such as the present one where an award has been set aside and the aggrieved party wants to initiate another round of arbitration only to take a second bite at the cherry, the process of the court would be susceptible to abuse by parties to litigate endlessly which completely goes against the aim and objective of the Act of 1996. If this practice is encouraged, the finality of an award would always be in a limbo.

17) The High Court of Bombay has, in the case of **Batliboi Environmental Engineering Ltd** (supra), the judgment relied upon by learned counsel for the petitioner, noted the legal position enunciated by Delhi High Court in **Jaiprakash Associates Limited's** case (supra) and has distinguished the said judgment in the following manner:

35. Finally, Mr. Andhyarujina would cite a decision by a Learned Single Judge of the



Delhi High Court in the case of Jaiprakash Associates. The submission is that, without losing sight of the limited scope of jurisdiction available to a Section 11 Court, the Delhi High Court has refused to refer parties to arbitration in a post-award reference on grounds of public policy, and refused to permit what was dead wood and non-arbitrable to be dragged into arbitration afresh. In Jaiprakash Associates, an arbitral tribunal had adjudicated on merits that there was no evidence to enable granting of the claim raised by the applicant in the Section 11 Petition. Yet, the same arbitral tribunal awarded damages of Rs. 60 crores. The winning party (the party that was awarded Rs. 60 crores) without evidence filed a petition to set aside the award since it was of the view that it ought to have been paid even more. In disposal of that Petition, the Section 34 Court set aside the arbitral award but on grounds totally contrary to the grounds of challenge to the award, and held that when the arbitral tribunal had found that there is no evidence or basis to make a claim, it could never have awarded damages of Rs. 60 crores. This decision of the Section 34 Court was not challenged, and instead, the party went in for a second initiation of arbitration.

36. In those circumstances, the Delhi High Court ruled that it was a second bite at the cherry and a dead wood claim was being pursued. Evidently, in Jaiprakash Associates, the arbitral tribunal had clearly ruled that the party seeking the second round of arbitration had no legs to stand on. This was a case of the arbitral tribunal returning findings on merits that there was no evidence. Yet, without any merit, damages of Rs. 60 crores had been awarded. The Section 34 Court set aside the award, not on the petition of the party that was asked to pay Rs. 60 crores but on a challenge mounted by the party that was awarded the damages despite the arbitral finding that the claim for damages had no legs to stand on. The judgement under Section 34 was not challenged despite the availability of a statutory right to appeal. Therefore, that judgement became absolute and final. In that context, the Delhi High Court ruled that



evidently dead wood was being pursued and a second bite at the cherry was being sought.

37. The Delhi High Court took pains to articulate the facts of the case to explain why it was deviating from the normal rule that the parties to an arbitral dispute would be free to commence arbitration afresh. A clear judicial finding was allowed to become absolute without exercise of the statutory right to appeal. It is in this context that the claims were held to be stale and dead. This is totally different from the facts at hand. In the instant case, the Supreme Court has clearly held that it was not opining on the merits. This meant that the Supreme Court was not endorsing the findings in the Section 37 Judgement, if that were to be regarded as a ruling on merits. In fact, by explicit reference to the jurisdiction under Section 37 read with Section 34 of the Act, the Supreme Court made it clear that it was endorsing the view that the Arbitral Award was untenable. The attempt to defend the Arbitral Award with a chart was also unsuccessful. Unfortunately for HPCL, the position in law that would follow is that the parties were restored to their pre-Arbitral Award positions for the proceedings to start afresh. No exceptional circumstances such as the one found in Jaiprakash Associates can be discerned for a similar view to be taken by me in these proceedings.

18) In the aforesaid case, the High Court of Bombay was faced with a situation where the award of the Arbitrator was upheld by the Court while exercising its power under Section 34 of the Act of 1996 but the Division Bench, while exercising its power under Section 37 of the Act of 1996, came to the conclusion that the arbitral award deserved to be set aside. The judgment of the Division Bench was challenged before the Supreme Court and the same was upheld. The learned Single Judge of Bombay High Court, while



examining the validity of second petition for reference of disputes to the arbitration, analysed the judgment of the Supreme Court whereby setting aside of the arbitral award was upheld by the said Court and concluded that the Supreme Court did not express opinion on the merits of the claims of the parties, as such, a second reference was maintainable. The conclusion arrived at by the learned Single Judge of Bombay High Court is reproduced as under:

9. In view of the foregoing, I do not think it necessary to burden this judgement with any further prolixity with more analysis of every other judgement cited by either side on the doctrine of merger. In my opinion, the SC Judgement is clearly an opinion that the Arbitral Award ought to have been held as not being sustainable in exercise of the jurisdiction under Section 37 of the Act read with Section 34 of the Act. The Supreme Court explicitly ruled that it was not commenting on the merits. Taking such explicit findings into account and that too in the context of the specific nature of the jurisdiction that Section 34 and Section 37 of the Act entails, I am of the opinion that no case has been made out to deviate from the norm that the parties are restored to the original pre-Arbitral Award position. Therefore, necessarily, this Section 11 Application deserves to be allowed.

19) From the foregoing analysis of the legal position, it becomes clear that the question whether a second reference is maintainable after the arbitral award made pursuant to the first reference has been set aside, has to be decided having regard to the peculiar facts and circumstances of each case. If it is found by the Referral Court while



considering the application for second reference that the disputes between the parties have been finally resolved in terms of the arbitral award passed pursuant to first reference or in terms of the judgment of the Court under Section 34/37 of the Act of 1996, it would be a case of dead claim and an application for second reference would not be maintainable. On the contrary, if the underlying disputes between the parties have remained unresolved and after setting aside of the award under Section 34 or 37 of the Act of 1996 and claims/counter claims of the rival parties have not been considered on their merits thereby leaving the underlying disputes unresolved, a second reference is certainly maintainable. In fact, the Supreme Court has, in the case of **Mcdermott International Inc. vs Burn Standard Co. Ltd. & Ors.** (2006) 11 SCC 181 held as under:

The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.



20) In the light of foregoing legal position, let us now consider the facts of the present case. There is no dispute to the fact that the learned Arbitral Tribunal pursuant to the first reference has considered the claims and counter claims of the parties on their merits. While doing so, the learned Arbitral Tribunal has found that all the claims of the petitioner excepting claim No.7 are without any substance and, accordingly, the same were rejected. Similarly, all the claims of the respondents were found to be without any substance and the same were rejected. The learned Designated Commercial Court, Srinagar, while considering the applications filed by both the parties under Section 34 of the Act of 1996, set aside the award. The relevant extracts of order dated 24.04.2025 passed by the learned Designated Commercial Court are reproduced as under:

“As mentioned above, by virtue of both the petitions, the petitioners in the respective petitions, have sought relief u/section 34 of the Arbitration and Conciliation Act for setting aside the arbitral award dated 21-1-2022 passed by learned Arbitrator Mr. Abdul Rashid malik on various grounds and one of the ground taken by both the petitioners is that arbitrator has passed the award without appreciating the relevant provisions of agreement and has been made in contrary to the terms of the contract. Besides this, as per the parties the award is in violation of statutory provision and principles of natural justice and that same has been passed without application of mind in conflict with public policy. Therefore, this being so, both



the petitions are allowed and the award passed by the sole arbitrator on 21-01-2022 is set aside. Nothing said in this order shall affect the further proceedings, if any carried before the arbitrator in future.”

21) From the afore-quoted order of the learned Designated Commercial Court, it is clear that the award of the Arbitral Tribunal has been set aside on the grounds that both the parties contend that the said award has been passed without appreciating the relevant provisions of the agreement, the same has been made contrary to the terms of the contract, the same is in violation of the statutory provision, the same has been passed in violation of the principles of natural justice, the same has been passed without application of mind and that the award is in conflict with public policy. The learned Designated Commercial Court has not considered the findings of the learned Arbitrator on their merits and instead, it seems that the award has been set aside on the basis of concession made by the parties that the same has been passed in the manner as indicated above.

22) Had it been a case where the learned Designated Commercial Court would have either appended its seal of approval to the award of the learned Arbitrator or had it been a case where the learned Designated Commercial Court would have come to a conclusion that even the claim that has been decided by the learned Arbitrator in favour of



the petitioner on its merits is not tenable and thereafter set aside the award, then the situation may have been different. But it is a case where the learned Designated Commercial Court has not rendered any finding of its own on the merits of the award and has set it aside on the basis of the concession made by the parties with regard to the manner in which the award has been passed by the Arbitral Tribunal. In this view of the matter the underlying disputes between the parties have remained unresolved. That is why the learned Designated Commercial Court, in its order dated 24.04.2025, has made it clear that the said order shall not affect the further proceedings, if any, carried before the Arbitrator in future leaving it open to the parties to take recourse to the arbitration afresh. It is pertinent to mention here that the order passed by the learned Designated Commercial Court on 24.04.2025 has attained finality as none of the parties has assailed the said order by filing appeal under Section 37 of the Act of 1996.

23) In view of the foregoing facts and circumstances of the case, the contention of the respondents that the claims of the petitioner have been reduced to deadwood and the same have been rendered non-arbitrable, cannot be accepted. It is clear from the analysis of the facts and circumstances of the case, as has been undertaken hereinbefore, that



underlying disputes between the parties have remained unresolved, therefore, the present petition filed by the petitioner seeking reference of disputes to arbitration in accordance with Clause 20.6 of the GCC, which has been quoted in the petition, is required to be allowed and the disputes are required to be referred to arbitration afresh.

24) Learned counsel for the petitioner has submitted that in the present case, the issues involved are more technical than legal in nature, as such, an Arbitrator with engineering background needs to be appointed.

25) If we have a look at the nature of claims that were raised by the parties before the learned Arbitrator, regarding which learned Arbitrator had framed issues, it appears that the same are more legal in nature. A perusal of the claims raised by the petitioner, which have been quoted hereinbefore, clearly indicate that the issues involved in the case are more factual than technical in nature which require appreciation of evidence that may be led by the parties. It would be, therefore, better if a judicially trained Arbitrator is appointed for determination of the disputes between the parties.

26) In view of the above, the petition is disposed of by referring all the disputes and differences covered by the



agreement to the learned Sole Arbitrator in the following terms:

- (I) Hon'ble Shri Justice M. K. Hanjura, former Judge of this Court is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.
- (II) A copy of this order be communicated to the learned Sole Arbitrator by the Registry of this Court within a period of ten days from today.
- (III) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the Act of 1996 to the parties within a period of two weeks from the date of receipt of this order.
- (IV) The parties shall appear before the learned Sole Arbitrator on a date and place to be fixed by the learned Sole Arbitrator.
- (V) All the arbitral costs and fee of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to final award that may be passed by the learned Arbitrator in relation to the costs.

(Sanjay Dhar)
Judge

SRINAGAR

26.12.2025

"Bhat Altaf-Szeg"

Whether the **Judgement** is speaking:

YES

Whether the **Judgement** is reportable:

YES