

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

WP(C) No.3055/2024

WP(C) No.3057/2024

WP(C) No.3050/2024

J&K STATE POWER DEV. CORPN. ...APPELLANT(S)

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

Vs.

JAGUAR OVERSEAS PVT. LTD. ...RESPONDENT(S)

Through: None.

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

(ORDER)(ORAL)

30.12.2024

- 1) By this common, above numbered three writ petitions raising similar issues are proposed to be disposed of.
- 2) It appears that three arbitration petitions under Section 11 of the Arbitration Act came to be filed by respondent No.3 before this Court seeking reference of disputes between the parties to the arbitration. The disputes pertain to contracts awarded by the petitioner to the respondent for designing, engineering, manufacture, fabrication, testing along with testing at manufacture's work site, supply of the material/equipment including transportation to site destination, insurance, storage at site and activities comprising route survey/site selection, erection, testing and commissioning of works for rural

electrification infrastructure and household electrification. Separate work orders were issued in favour of the respondent in respect of three Districts, namely, Pulwama, Baramulla and Anantnag. Arbitration Petition No.12 of 2022 arose out of contract in respect of Pulwama District, Arbitration Petition No.13 of 2022 in respect of Baramulla District whereas Arbitration Petition No.14 of 2022 arose out of contract in respect of Anantnag District. All these arbitration petitions came to be disposed of by Hon'ble the Chief Justice vide order dated 19.10.2023. In terms of the said order, Hon'ble Mr. Justice Bansi Lal Bhat (former Judge of this Court) was appointed as the Arbitrator to resolve the disputes between the parties. It was further provided in the order that the objection of the petitioner herein relating to issue of limitation shall be decided by the Arbitrator first and only after giving a decision on the said issue, the Arbitrator will proceed in the matter in accordance with law.

3) Vide the impugned order dated 30.10.2024 passed in all the three arbitration cases pertaining to aforesaid three Districts, the learned Arbitrator has decided the issue of limitation in favour of the respondent and besides this, the learned Arbitrator has declined the application of the petitioner for recalling the order of forfeiture of defence as also for change of venue to Srinagar. Writ petition bearing WP(C) No.3050/2024 pertains to the arbitration proceedings relating to District Pulwama, WP(C) 3055/2024 pertains to arbitration proceedings relating to

District Anantnag whereas WP(C) No.3057/2024 pertains to arbitration proceedings relating to District Baramulla. Identical orders have been passed by the learned Arbitrator in all the three petitions on 30.10.2024, which are impugned in these writ petitions.

4) Learned counsel for the petitioner has contended that the learned Arbitrator has erred in declining the application of the petitioner for recalling of order of forfeiture of defence, inasmuch as the petitioner was obliged to file its defence only after the issue of limitation was decided by the learned Arbitrator. It has also been contended that in the impugned order the learned Arbitrator has observed that status of the petitioner is that of an inactive player and it can only watch the proceedings. The learned counsel has also contended that as per the terms of the arbitration clause, the venue of arbitration had to be Srinagar but the learned Arbitrator is conducting the arbitration proceedings from Jammu which is contrary to the terms of the agreement.

5) I have heard learned counsel for the petitioner and perused record of the case.

6) So far as the jurisdiction of this Court under Article 226 and 227 of the Constitution of India to interfere with the interim orders passed an Arbitrator is concerned, the same is extremely limited. The Supreme Court in the case of **M/S Deep Industries Ltd. vs Oil and Natural Gas Corporation Ltd,**

(2020) 15 SCC 706, has held that Arbitration Act is a special Act and a self- contained Code dealing with arbitration. It has been observed by the Supreme Court in the said case that the legislative policy qua the general revisional jurisdiction that is contained in the amendments made to Section 115 C.P.C. should also be kept in mind when High Courts dispose of petitions filed under Article 227. While holding so, the Supreme Court has relied upon the ratio laid down in the case of **SBP & Co. vs. Patel Engineering Ltd. & Another**, (2005) 8 SCC 618, particularly paras 45 and 46 of the said judgment upon which, reliance has been placed by the Supreme Court, are reproduced as under:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by

the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. *The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.*

7) From the foregoing analysis of law on the subject, it is clear that the Supreme Court has disapproved the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 and 227 of the Constitution. It is also clear that intervention by the High Court at a stage when the proceedings are still going on before the Arbitral Tribunal is not permissible in law. Once the arbitration proceedings have commenced, the aggrieved party has to await the award of the Arbitral Tribunal which it has a right to challenge under Section 34 of the Arbitration and Conciliation Act.

8) Applying the aforesaid ratio to the present cases, the scope of interference in the impugned orders passed by the learned Arbitrator is very minimal. If at all the learned Arbitrator has committed an illegality while passing any interim order during arbitral proceedings, it will form a ground for challenging the

award which ultimately the learned Arbitrator may pass. But at this stage, this Court cannot interfere in the proceedings pending before the learned Arbitrator as the same would amount to defeating the object of Arbitration and Conciliation Act which is a self-contained Code.

9) For the foregoing reasons, without going into the merits of the contentions raised by the petitioner, the present petitions are held to be not maintainable and are dismissed accordingly, leaving it open to the petitioner to urge these contentions at the time of challenging the final award that may be passed by the learned Arbitrator.

Srinagar
30.12.2024
“Bhat Altaf-Secy”

(SANJAY DHAR)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No