



2024:UHC:9906

SL. No.	Date	Office Notes, reports, orders or proceedings or directions or Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			ARBAP No.36 of 2024 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> Mr. Akshay Pradhan, Advocate for the petitioner. Mr. Anil Kumar Joshi, Advocate for the respondents. 2. This is an application under Section 11(6) of Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator. 3. According to applicant, U.P. Rajkiya Nirman Nigam Ltd. awarded a contract to him for certain civil works at Kashipur vide Work Order No.15/1452 and the total value of work was INR 8.5 Crores. According to applicant, although some amount was paid to him against bills raised by him from time-to-time, however, a sum of ₹4,78,15,970/- is yet to be paid to him. It is further his case that he completed the work to the satisfaction of authorities of U.P. Rajkiya Nirman Nigam Ltd., therefore, withholding of the outstanding dues by the respondents, is without any reason or justification whatsoever. Applicant has referred to Clause 15 of the Work Order issued to him on 01.09.2014 for seeking appointment of arbitrator, which reads as under: “(15) इस अनुबन्ध की किन्हीं शर्तों से उत्पन्न किसी विवाद की दशा में, मामले को इकाई के प्रभारी को निर्दिष्ट किया जाएगा जिसका विनिश्चय अन्तिम और दोनों पक्षकारों पर बन्धनकारी होगा।” 4. Clause 15 of the Work Order provides that in case of any dispute or difference between the parties to the



		agreement, the matter shall be referred for arbitration to Unit In-charge, whose determination shall be final and binding on both the parties. 5. Learned counsel for the applicant submits that, in view of provision contained in Section 12(5) of Arbitration & Conciliation Act, Unit In-Charge cannot now act as an Arbitrator, therefore an independent Arbitrator needs to be appointed by this Court. This submission is not disputed by learned counsel for respondents. 6. Learned counsel for the respondents, however, submitted that the claim raised by applicant is time barred, as the Work Order was issued to the applicant in 2014 and work was to be completed upto 10.11.2015. He further submitted that physical verification of the work done by applicant could not be completed due to his non-cooperative attitude and Irrigation Research Institute, Roorkee has been requested to do physical verification work of the applicant. 7. Learned counsel for the respondents relied upon a judgment rendered by Hon'ble Supreme Court in the case of "Arif Azim Company Limited Vs. Aptech Limited", reported in (2024) 5 SCC 313, in support of his contention that a time barred claim cannot be referred for Arbitration. In the said judgment, it was held that referral Court has to examine that application under Section 11(6), is filed within period of limitation, i.e., 3 years from sending a valid notice invoking arbitration. 8. Learned counsel for the applicant,
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		however, submitted that in a subsequent judgment rendered by Hon'ble Supreme Court in the case of "SBI General Insurance Co. Ltd. Vs. Krish Spinning", reported in 2024 SCC Online SC 1754, Hon'ble Supreme Court has held that while considering an application under Section 11(6), the scope of enquiry is limited to the prima facie existence of arbitration agreement. Paragraph nos.113, 114, 128, 129 & 133 of the judgment rendered in SBI General Insurance Co. Ltd. (Supra) are reproduced below: "113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re : Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: "209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]" (Emphasis supplied) 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). 128. On the first issue, it was observed by us that
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		the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963, i.e., 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.” 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. 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).” 9. In the case of S.B.I. General Insurance Co. Ltd. (Supra), the view taken in Arif Azim Company Limited was reiterated in paragraph no.133 of the judgment and it was held that referral Court shall limit its enquiry to examine whether Section 11(6) application is made within 3 years or not. 10. Admittedly, the notice, in terms of Section 21 of the Act, was issued by applicant on 01.08.2024 and the application under Section 11(6) of the Act has been filed by him, on
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			12.09.2024, therefore, in view of the law declared by Hon'ble Supreme Court in the case of SBI General Insurance Co. Ltd. (Supra), the application is within period of limitation. 11. I, therefore, appoint Hon'ble Mr. Justice, S. Ravindra Bhat, Phone No.9818000160, retired Judge, Supreme Court of India, as sole Arbitrator in the matter to adjudicate the disputes between the parties arising out of the aforesaid contract/agreement, subject to his furnishing declaration, in terms of Section 11(8) read with Section 12 of the Arbitration and Conciliation Act, 1996 regarding his independence and impartiality in the matter, to this Court within ten days from the date of receipt of this order. Learned Arbitrator shall fix his fees in consultation with both the parties. 12. The Registrar General of this Court is hereby directed to forthwith send a copy of this order to the prospective Arbitrator. (Manoj Kumar Tiwari, A.C.J.) 24.12.2024 Arpan ARPAN JAISWAL Digitally signed by ARPAN JAISWAL, DN: cn=ARPAN JAISWAL, o=UTTARAKHAND, ou=HIGH COURT OF UTTARAKHAND, email=arpajaiswal@judges.nic.in, c=IN, serial=123456789, version=3, reason=I am the author of this document, Date: 2024.12.24 13:15:54 +05'30'
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