

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

**Case No: AA No. 31/2014
C/W
AA No.41/2015**

*Reserved on: 22.07.2026
Pronounced on: 11.09.2026
Uploaded on: 11.09.2026*

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

M/s Winner Construction Pvt. Ltd.

.....Petitioner(s).....

Through: Mr. Pranav Kohli, Sr. Advocate with
Mr. Farhan Mirza, Advocate

v/s

M/s Texas Resources Pvt. Ltd.

Through: Mr. Rahul Pant, Sr. Advocate with Mr. Dhruv
Pant, Advocate.
Mr. Karman Singh Johal, Advocate

.....Respondent(s)...

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

JUDGMENT

1. The Sainik Co-operative Housing Building Societies engaged the services of M/s Shelatkar Construction Pvt. Ltd. for developing the Central Shopping-cum-Commercial Complex at Sainik Colony, Jammu. M/s Shelatkar Construction Pvt. Ltd., through its Architects, M/s Nanda Designers Consortium, invited tenders for outsourcing the work to other contractor. M/s Texas Resources Pvt. Ltd. submitted its offer for the work,

which was accepted by M/s Shelatkar Construction Pvt. Ltd. Accordingly, the work order dated 20.07.2010 was issued in favour of M/s Texas Resources Pvt. Ltd., and an agreement was entered into between M/s Shelatkar Construction Pvt. Ltd. and M/s Texas Resources Pvt. Ltd. M/s Texas Resources Pvt. Ltd. allotted a part of the said work to M/s Winners Construction Pvt. Ltd. vide letter of intent dated 28.07.2010.

2. The petitioner, M/s Winner Construction Pvt. Ltd., filed a petition bearing AA No. 31/2014 under Section 11(6) of the Arbitration and Conciliation Act, 1997 for appointment of an Arbitrator against M/s Texas Resources Pvt. Ltd. Subsequently, in terms of order dated 10.04.2026, M/s Shelatkar Construction Pvt. Ltd. was arrayed as respondent No. 2 in the petition.

3. In turn, M/s Texas Resources Pvt. Ltd. also filed a petition bearing AA No. 41/2015 under Section 11(6) of the Arbitration and Conciliation Act, 1997 against M/s Shelatkar Construction Pvt. Ltd. Pursuant to order dated 18.08.2023, M/s Winner Construction Pvt. Ltd. was arrayed as respondent No. 2 in the petition filed by M/s Texas Resources Pvt. Ltd.

4. Since the petitioner in AA No. 31/2014 has mainly relied upon the agreement between M/s Shelatkar Construction Pvt. Ltd. and M/s Texas Resources Pvt. Ltd. for settlement of the disputes through arbitration, all these petitions were heard together and are being disposed of by this common order.

5. First the petition filed by M/s Texas Resources Pvt. Ltd. against M/s Shelatkar Construction Pvt. Ltd. and another, bearing AA No. 41/2015, shall be considered.

AA No.41/2015

6. The petitioner, M/s Texas Resources Pvt. Ltd., has filed the present petition for appointment of an Arbitrator on the ground that various disputes have arisen between the parties and the petitioner is entitled to a sum of Rs.3,07,74,534/- The petitioner, through notice dated 03.10.2015, requested respondent No.1 to appoint an Arbitrator in terms of the arbitration clause contained in the agreement entered into between the parties, but the request of the petitioner was not acceded to.

7. The respondent No.1 has filed its response, stating therein that there is no arbitration agreement between the parties so as to confer jurisdiction upon this Court, as, according to respondent No.1, the arbitration proceedings are to be governed by the provisions of the Indian Arbitration Act, 1940, or any statutory amendments thereto or any re-enactment thereof for the time being in force. It is further contended that the present petition is not maintainable before this Court, as the said application can only be entertained by the competent Court at Mumbai, Maharashtra. It has also been contended that the petition is time-barred and that no decision was taken by the company authorizing Shri Naveen Anand to file any petition against the respondent No.1. The respondent No.1 has also denied the issuance of the notice dated 03.10.2015.

8. Mr. Karman. S. Johal, learned counsel appearing for the petitioner, has submitted that the dispute has arisen between the parties as the petitioner has been paid only an amount of Rs. 50,00,000/-, whereas a sum of Rs. 2,07,64,534/- is still due and payable to the petitioner-company by

respondent No.1. He has further submitted that the petition has been filed by a duly authorized person and, as such, an Arbitrator may be appointed.

9. *Per contra*, Mr. Rahul Pant, learned Senior Counsel for the respondent No.1, M/s Shelatkar Construction Pvt. Ltd., restricted the challenge to the appointment of an Arbitrator solely only on the ground that the petition has been instituted by an incompetent person. In support of this contention, he relied upon the judgments in *Hari Shree Enterprises v. Vikas Housing Ltd.*, 2009(4) ALL MR 247; *Kleen and Marshalls Manufacturers and Exports Limited v. State of Jammu & Kashmir*, (2000) 2 KarLJ 435; *Apple Valley Resort (M/s.) v. H.P. State Electricity Board and another*, 2004(1) CLJ (H.P.) 281; and *M/s Nibro Limited v. National Insurance Co. Ltd.* (Delhi High Court, Suit No. 933 of 1983, decided on 06.03.1990).

10. Heard learned counsel appearing for the parties and perused the record.

11. As the learned Senior Counsel having restricted his submissions exclusively to the maintainability of the petition on the ground of the incompetence of Shri Naveen Anand to file the present petition, this Court need not advert to the remaining objections set out in the reply filed by the respondent No.1, M/s Shelatkar Construction Pvt. Ltd.

12. The Board Resolution, pursuant to which Mr. Naveen Anand has been authorized to institute and file civil suits/applications/cross-appeals/petitions and affidavits, etc., is extracted as under:

“CERTIFIED COPY OF THE BOARD RESOLUTION
PASSED IN THE MEETING OF BOARD OF DIRECTORS
OF THE COMPANY HELD ON THURSDAY, 27TH

SEPTEMBER 2012 AT 1C LOVELOCK PLACE, THE REGISTERED OFFICE OF THE COMPANY.

RESOLVED that permission of the BOARD OF DIRECTORS of the Company, be and is hereby accorded to the proposal of authorizing MR. NAVEEN ANAND , for the purpose of filing Civil Suit / Application /Cross Appeals / Petitions & Affidavits or other documents in the Court of Law at Jammu & Kashmir and further to appoints and instruct Legal Practitioner/Advocates/Attorney for the said purpose and further Mr. Naveen Anand shall have all the authority to do all acts necessary for any Civil Litigation in the State of Jammu & Kashmir for and on behalf of M/s TEXAS RESOURCES PRIVATE LIMITED.”

13. A perusal of the aforesaid Board Resolution reveals that at a meeting of the Board of Directors held on 27.09.2012 at the registered office of the Company, a proposal was considered and passed, authorizing Shri Naveen Anand to institute and pursue civil suits, applications, cross-appeals, and petitions, as also to file affidavits and other pleadings before Courts of law in the State of Jammu & Kashmir. He was further empowered to engage legal practitioners, advocates, or attorneys, and to perform all necessary acts in connection with civil litigation for and on behalf of M/s Texas Resources Pvt. Ltd.

14. It is, thus, evident that Shri Naveen Anand is the duly authorized representative of the petitioner-Company, specifically empowered to institute litigation and perform all acts incidental thereto within the erstwhile State of Jammu & Kashmir. Consequently, the judgments relied upon by the learned Senior Counsel are distinguishable and bear no application to the facts of the present case, given that the Board of Directors of M/s Texas Resources Pvt. Ltd. had expressly authorized Shri Naveen Anand to institute proceedings and engage counsel on its behalf.

15. There is, therefore, no merit in the submission of Mr. Pant, learned Senior Counsel for the respondent No.1 that the present petition has been instituted by an incompetent person. On the contrary, the objection regarding lack of authority is one that redounds against the respondent No.1-Company itself. The reply on behalf of the respondent No.1-Company has been filed by one Ravindranath Sahadevrao Shelatkar, whose status and authority vis-à-vis the Company remain unestablished on record. No board resolution or authorization has been produced to demonstrate that the said individual is empowered to represent the respondent in these proceedings. Consequently, the decisions relied upon by the learned Senior Counsel do not advance the respondent No.1's case; rather, the principles enunciated therein operate against the respondent No.1 for its own failure to show that the objections were filed by an authorized person.

16. Be that as it may, this Court finds that there exists an arbitration clause between the parties, contained in Clause 44 of general conditions of Contract, and that the petitioner has invoked the said arbitration clause by way of notice dated 03.10.2015, seeking reference of the disputes that have arisen between the parties to arbitration. Accordingly, the present petition is allowed.

AA No.31/2014.

17. The petitioner-M/s Winner Construction Pvt. Ltd., was sub-contracted a portion of the project work by the respondent No.1, M/s Texas Resources Pvt. Ltd., and has invoked the jurisdiction of this Court seeking appointment of an Arbitrator for the adjudication of disputes that have arisen between the parties.

18. Briefly stated, the petitioner's case is that the respondent No.1, M/s Texas Resources Pvt. Ltd., issued a Letter of Intent dated 28.07.2010 in its favour. Under the terms thereof, all the provisions of the main agreement, including the arbitration clause between M/s Shelatkar Construction Pvt Ltd. and M/s Texas Resources Pvt. Ltd were incorporated into and made an integral part of the Letter of Intent issued by respondent No. 1 in favour of the petitioner.

19. The petitioner claims to have served a notice dated 23.09.2013 upon the respondent-M/s Texas Resources Pvt. Ltd., calling upon the respondent to make the payment of Rs. 98,19,314/ to the petitioner.

20. The respondent No.1-M/s Texas Resources Pvt. Ltd. has filed objections, stating therein that the petitioner never approached the respondent for appointment of an Arbitrator, which, according to the respondent, is a mandatory requirement under the Arbitration and Conciliation Act, 1997. It is further contended that the Letter of Intent dated 28.07.2010 merely refers to the terms and conditions contained in the contract/tender documents of M/s Shelatkar Construction Pvt. Ltd. and does not incorporate or refer to the arbitration agreement contained in the agreement executed between M/s Shelatkar Construction Pvt. Ltd. and the answering respondent. It is further contended that the petitioner was not a party to the agreement executed between the answering respondent and M/s Shelatkar Construction Pvt. Ltd., therefore, the communication dated 28.07.2010 would not *ipso facto* extend the terms and conditions of the said agreement, including the arbitration clause, to the petitioner and answering

respondent. Respondent No.1 has, however, admitted that the work was allotted to the petitioner on a back-to-back basis as a sub-contractor vide communication dated 28.07.2010, while denying that the agreement executed between the respondent and M/s Shelatkar Construction Pvt. Ltd. was made part of the Letter of Intent or the contractual arrangement between the petitioner and respondent No.1.

21. Mr. Pranav Kohli, learned Senior Counsel appearing for the petitioner, has argued that the parties were *ad idem* with regard to the terms and conditions of the contract, including those contained in the agreement, particularly Clause 44 thereof. He has laid considerable emphasis on the settled principle of law that there need not necessarily be a single document signed by the parties constituting the arbitration agreement and that even an unsigned arbitration agreement can be enforced, provided that the existence of such an agreement can be gathered from a series of documents forming part of the contractual arrangement between the parties. He has further argued that issuance of notice under Section 21 of the Arbitration and Conciliation Act, 1997 is mandatory; however, non-issuance of such notice is not fatal to the proceedings. In support of his submissions, he has relied upon the judgments of the Hon'ble Supreme Court of India in **Nehru Nagar Samruddhi CHS Ltd. v. Hirani Developers**, reported as **2026 INSC 484**; **ASF Buildtech (P) Ltd. v. Shapoorji Pallonji and Co. (P) Ltd.**, reported as **(2025) 9 SCC 686**; **Adavya Projects Private Limited v. Vishal Structurals Private Limited and others**; and **M/s Bhagheeratha Engineering Ltd. v. State of Kerala**, reported as **2026 LiveLaw (SC) 31**.

22. *Per contra*, Mr. Karman S Johal, learned counsel appearing for respondent No.1, has argued that a mere reference to the tender documents of M/s Shelatkar Construction Pvt. Ltd. in the Letter of Intent would not have the effect of incorporating the arbitration clause into the LOI, particularly when the arbitration clause was required to be specifically incorporated in the Letter of Intent and could not be made applicable merely by way of a general reference to the terms and conditions contained in the tender documents. He has further argued that the raising of bills or even execution of the work would not *ipso facto* attract an arbitration clause in a secondary document, where such secondary document does not specifically provide for the incorporation of the arbitration clause. He has also submitted that no notice invoking arbitration was ever issued by the petitioner. According to him, the notice appended to the petition was merely a demand notice calling upon respondent No.1 to pay an amount of Rs. 98,19,314/- along with interest @ 18% to the petitioner and through the medium of this notice, the petitioner did not invoke arbitration because the petitioner knew that there was no arbitration agreement between the parties. It is, therefore, contended that the mandatory requirement of issuance of a notice invoking arbitration was never complied with by the petitioner. In support of his submissions, he has relied upon the judgments of the Hon'ble Supreme Court of India in **NBCC (India) Limited v. Zillion Infraprojects Pvt. Ltd.**, reported as **2024 INSC 218**; **Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. and another**, reported as **2026 INSC 484**; **Adavya Projects Pvt. Ltd. v. M/s Vishal Structural**

Pvt. Ltd., reported as **AIR 2025 SC 2485**; and **Inox Wind Limited v. Thermocables Limited**, reported as **(2018) 2 SCC 519**.

23. Heard learned counsel appearing for the parties and perused the record.

24. Two issues arise for consideration before this court:-

- (i)** Whether there exists an agreement between the parties providing for reference of disputes to arbitration ?
- (ii)** If the answer to the aforesaid question is in the affirmative, whether the petitioner has invoked the arbitration clause by issuing an appropriate notice and, if not, what would be the consequence thereof?

Issue no.1: Whether there exists an agreement between the parties providing for reference of disputes to arbitration?

25. It is undisputed that there is no executed document signed by both the petitioner and respondent No. 1 containing an express arbitration agreement. Instead, the petitioner rests its prayer for reference of disputes to arbitration solely upon Clause 'E' of the Letter of Intent dated 28.07.2010 issued in its favour by respondent No. 1. The said clause is extracted hereunder:-

“E. Terms and conditions- All terms and conditions shall be as per the contract tender documents by M/s Shelatkar Construction Pvt. Ltd.”.

26. In terms of Clause 'E' of the Letter of Intent, the terms and conditions of the contract were to be as per the contract/tender documents of M/s Shelatkar Construction Pvt. Ltd. The question that, therefore, arises for consideration is whether Clause 'E' of the Letter of Intent would, by such reference, have the effect of incorporating all the terms and conditions of the agreement executed between the respondent No.1 and M/s Shelatkar Construction Pvt. Ltd., including the arbitration clause, into the contractual arrangement between the petitioner and respondent No.1.

27. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in **Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. and another**, reported as **2026 INSC 484**. In the said case, the appellant had initially entered into a Development Agreement with the respondent-Company, Clause 36 whereof provided that, in the event of any dispute or difference arising in respect of the terms and conditions of the said agreement, the parties would appoint a Sole Arbitrator and the arbitration proceedings would be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Subsequently, the appellant entered into separate agreements with the Society and its members. Clause 14 of those agreements specifically provided that: "it is clarified that all the terms and conditions of the Development Agreement dated 04.07.2012 shall be construed to form part of these presents and all the clauses of the same shall be binding on the parties hereto."

28. It was in the aforesaid factual backdrop that the question arose before the Hon'ble Supreme Court as to whether the terms and conditions

of the Development Agreement dated 04.07.2012, including the arbitration clause contained therein, stood incorporated *ipso facto* into the subsequent agreements executed between the appellant, the Society and its members. The Hon'ble Supreme Court, while examining the said issue, observed as under:

“11. Applying the afore-stated edict and, in particular, the illustration in paragraph 17 of M.R. Engineers and Contractors Private Limited (2024) 7 SCC 174 (supra), we find that this was not a case of mere reference to an earlier document containing an arbitration clause. The later Permanent Alternate Accommodation Agreements entered into by the appellant with the respondent members unequivocally recorded in Clause 14 thereof that all the terms and conditions of the Development Agreement dated 04.07.2012 shall be construed to form part of the said agreements and all clauses of the same shall be binding on the parties to those later agreements. There could be no clearer indication of the intention of the parties to incorporate and assimilate the Development Agreement dated 04.07.2012 in its entirety into the later Permanent Alternate Accommodation Agreements. Not stopping short at asserting that all terms and conditions of the said Development Agreement should be construed to be part of the Permanent Alternate Accommodation Agreements, Clause 14 goes on to affirm that all clauses of the Development Agreement shall be binding on the parties to the Permanent Alternate Accommodation Agreements.

12. This was, thus, not a case of mere reference to an earlier agreement but a case where the parties to the later contract clearly intended to import the Development Agreement, body and soul, into the later agreements. Therefore, there can be no doubt as to the incorporation of Clause 36 of the Development Agreement, i.e., the arbitration clause, into the Permanent Alternate Accommodation Agreements.”

29. In “*Shinhan Bank v. Carol Info Services Ltd.*”, (2023) 20 SCC

388, the Hon'ble Apex Court has held as under:

11. The amenities agreement which was entered into between the parties on 25-8-2016, inter alia, contains the following provision:

“This Agreement is executed contemporaneously with the said Leave and Licence Agreement and shall be read and construed accordingly. The provision of this Agreement shall be deemed to be and shall constitute an integral part of the said Leave and Licence Agreement in respect of the Licence of the Licensed Premise granted by the Licensors to the Licensee. All provisions of the said Leave and Licence Agreement shall, mutatis mutandis; apply to this amenities agreement.”

12. The amenities agreement contains a provision to resolve disputes through arbitration. Clause 17 is in the following terms:

“17. All disputes, controversies or claims arising out of or relating to this Agreement : including existence or interpretation of any clause hereof, shall be referred to arbitration by a sole arbitrator duly appointed by mutual consent of both the parties in writing, failing which under the provisions of the Arbitration and Conciliation Act, 1966. The cost of the arbitration shall be borne equally. The place of arbitration shall be Mumbai and the arbitration shall be governed by the Arbitration and Conciliation Act, 1966 as amended from time to time. The language of the arbitration proceedings shall be English. The award shall be final and conclusive. The Courts in Mumbai shall have exclusive jurisdiction to try and entertain matters arising here from.”

13. The submission which has been urged on behalf of the respondent is that in terms of Section 7(5), a mere reference to a document would not have the effect of making an arbitration clause from that document a part of the contract. The submission is based on the decision of this Court in *M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders*

Ltd. [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]

14. Clause (1) of the amenities agreement which has been extracted above indicates that (i) the provisions of the amenities agreement shall be deemed to be and shall constitute an integral part of the Leave and Licence Agreement in respect of the licence granted by the petitioner to the respondent; and (ii) all the provisions of the Leave and Licence agreement shall mutatis mutandis apply to the amenities agreement. Clause 17 of the amenities agreement contains an agreement to refer disputes to arbitration.

15. The plain consequence of Clause (1) of the amenities agreement is that all the terms of that agreement constitute an integral part of the Leave and Licence agreement. The amenities agreement does not merely contain a reference to the Leave and Licence agreement. It incorporates all the terms of the amenities agreement as an integral part of the Leave and Licence agreement. By doing so, the parties have intended to make the arbitration clause in the amenities agreement an integral part of the Leave and Licence agreement.

16. Section 7(5) of the Arbitration and Conciliation Act, 1996 stipulates that the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract. Clause (1) of the amenities agreement is intended to make the arbitration clause which is embodied in the amenities agreement (Clause 17) an integral part of the Leave and Licence agreement.

30. In the present case, Clause 'E' of the Letter of Intent stipulates that all terms and conditions shall align with the contract tender documents of M/s Shelatkar Construction Pvt. Ltd. Thus, it cannot be definitively held at this stage that no arbitration agreement exists between the parties. Be that as it may, the Hon'ble Apex Court in "**Maharashtra State Electricity**

Distribution Co. Ltd. v. R Z Malpani”, 2026 SCC OnLine SC 553, has observed as under:

42. It goes without saying that the scope of inquiry at the stage of Section 11 is extremely limited and only pertains to an examination about *prima facie* existence of an arbitration agreement. Judicial non-interference in the arbitration process is the sacrosanct principle which guides alternative dispute resolution and Courts must be highly circumspect in interfering at the referral stage, especially since there is no appeal available in the 1996 Act against an order under Section 11. The Arbitral Tribunal, in exercise of its jurisdiction under Section 16 must be left to decide on its jurisdiction. The Courts should follow the principle of ‘When in doubt, do refer’ and lean towards referring matters to arbitration when the arbitration agreement is *prima facie* existent. However, it is only in the rarest of rare cases where even on a *prima facie* view, without going into disputed facts between the parties, there appears to be no existence of arbitration agreement between the parties, the Court can reject the application for appointment of an arbitrator and reference of the parties to arbitration. The instant case appears to be a fit case where, as discussed, even without going into the disputed facts and merely on a *prima facie* view of the matter, there is no existence of arbitration agreement and therefore, the decision of the High Court to appoint an arbitrator requires interference.

31. The judgment of the Hon’ble Supreme Court of India in **NBCC (India) Limited v. Zillion Infraprojects Pvt. Ltd.**, reported as **2024 INSC 218**, cannot be applied in this case. In fact, clause 7.0 of the LOI weighed with the Hon’ble Supreme Court to observe that there was no intention of the parties to incorporate the arbitration clause in the LOI. The relevant para is extracted as under:

28. It is thus clear that the intention between the parties is very clear. **Clause 7.0 of the Lol which also forms part of the agreement specifically provides that the redressal of the dispute between NBCC and the respondent shall only**

be through civil courts having jurisdiction of Delhi alone. It is pertinent to note that Clause 7.0 of the Lol specifically uses the word "only" before the words "be through civil courts having jurisdiction of Delhi alone".

32. In light of the above, guided by the well-settled principle laid down by the Hon'ble Supreme Court, '*when in doubt, refer*', this Court is of the considered view that the issue regarding the existence of the arbitration agreement should at least be left to be adjudicated by the learned Arbitrator. Issue No.1 is answered accordingly.

Issue No.ii: If the answer to the aforesaid question is in the affirmative, whether the petitioner has invoked the arbitration clause by issuing an appropriate notice and, if not, what would be the consequence thereof?

33. Undisputedly, the demand notice dated 23.09.2013 issued to respondent No. 1 for payment of Rs. 98,19,314/- does not constitute a valid invocation under Section 21 of the Act, as arbitration was never invoked thereunder. Nevertheless, learned Senior Counsel for the petitioner contends that the non-issuance of a Section 21 notice is a procedural defect rather than a jurisdictional bar, and therefore cannot warrant the rejection of the Section 11 petition. In "*Bhagheeratha Engg. Ltd. v. State of Kerala*", (2026) 5 SCC 758, the Hon'ble Apex Court has held as under:

39. Secondly, the object of Section 21 of the A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. **There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of arbitration.** Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes arbitrable.

40. In *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.* [*ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.*, (2025) 9 SCC 76 : (2025) 4 SCC (Civ) 27] , one of us, J.B. Pardiwala, J., felicitously put the principle thus: (SCC pp. 209-12, paras 163,165 & 169)

“163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of “*commencement of arbitration proceedings*”. The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would be the date on which the arbitral proceedings in respect of a particular dispute commences. The words “particular dispute” assume significance in the interpretation of this provision and its underlying object. *It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term “particular dispute”, does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the “arbitration agreement” to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional — it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.*

165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his “claim”, the points at issue and the relief or remedy

sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term “claim” as opposed to “particular dispute” employed in Section 21 of the 1996 Act. Although, it could be said that the term “particular dispute” under Section 21 connotes a larger umbrella within which the term “claim” under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such “claim” must be the same or in tandem with the “particular dispute” in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief sought or the framing of issues — its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme

would run contrary to both the text and the object of the Act.”

(emphasis in original and supplied)

34. In “*Adavya Projects (P) Ltd. v. Vishal Structural (P) Ltd.*”, (2025)

9 SCC 686, the Hon’ble Apex Court has observed as under:

Notice invoking arbitration under Section 21 ACA

16. Section 21 falls under Part I, Chapter V of the ACA, which deals with “Conduct of arbitral proceedings”. The provision is extracted hereinbelow for reference:

“21. Commencement of arbitral proceedings.— Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

17. A plain reading of the provision shows that in the absence of an agreement between the parties, arbitral proceedings are deemed to have commenced when the respondent receives a request to refer disputes to arbitration. **It is clear that Section 21 does not expressly mandate the claimant to send a notice invoking arbitration to the respondents. However, the provision necessarily mandates such notice as its receipt by the respondent is required to commence arbitral proceedings, unless the parties have mutually agreed on another date/event for determining when the arbitral proceedings have commenced.**

18. This Court has expounded the purpose and object underlying the notice referenced in Section 21 in several judgments, which can be stated as follows.

19. *First*, the notice is necessary to determine whether claims are within the period of limitation or are time-barred. Section 43(1) ACA stipulates that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Further, Section 43(2) provides that for the purpose of the Limitation Act, an arbitration shall be deemed to have commenced on the date referred to in Section 21. Hence, the date of receipt of the Section 21 notice is used to determine whether a dispute has been raised within the limitation period as specified in the Schedule to the Limitation Act, as held by this Court in *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.* [*Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*, (2004) 7 SCC 288, paras 26, 29 : (2004) 121 Comp Cas 581] and *State of Goa v. Praveen Enterprises* [*State of Goa v. Praveen Enterprises*, (2012) 12 SCC 581, paras 16, 18] .

20.*Second*, the date of receipt of notice is also relevant to determine the applicable law to the arbitral proceedings. This can be understood in two senses: (i) When the arbitral proceedings are governed by a law that is different from the proper law of the contract, the governing law applies only after the arbitral proceedings have commenced, as held in *Milkfood [Milkfood Ltd. v. GMC Ice Cream (P) Ltd.]*, (2004) 7 SCC 288, para 31 : (2004) 121 Comp Cas 581] ; and (ii) Section 85(2)(a) ACA provides that the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961 will apply to arbitral proceedings that commenced prior to the ACA coming into force, unless otherwise agreed by the parties. Hence, the date of invoking arbitration is necessary to determine which arbitration law applies to the proceedings as per the decisions in *Milkfood [Milkfood case, (2004) 7 SCC 288, paras 46, 49, 70 : (2004) 121 Comp Cas 581]* and *Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd. [Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643, para 10]* Similarly, the applicability of amendments to the ACA to arbitral proceedings is determined by reference to the date on which such proceedings commenced as per Section 21. [For example, the applicability of the Arbitration and Conciliation (Amendment) Act, 2015 to arbitral proceedings depends on whether the notice invoking arbitration was issued before or after the amendment came into force. See *BCCI v. Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287, paras 37-39 : (2018) 3 SCC (Civ) 534.]

21.*Third*, an application before the High Court or this Court under Section 11(6) ACA for appointment of arbitrator can be filed only after the respondent has failed to act as per the appointment procedure in the arbitration agreement. Hence, invocation of arbitration as provided in Section 21, and the subsequent failure of the respondent to appoint its arbitrator or agree to the appointment of a sole arbitrator as provided in Sections 11(4) and 11(5), are necessary for invoking the court's jurisdiction under Section 11. This is as per the decision of this Court in *BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 15 : (2021) 3 SCC (Civ) 352]* Further, the limitation period within which the Section 11 application must be filed is also calculated with reference to the date on which the appointment procedure under the arbitration agreement fails. [*BSNL case*, (2021) 5 SCC 738, para 16 : (2021) 3 SCC (Civ) 352]

22. It is clear that by fixing the date of commencement of arbitral proceedings by anchoring the same to a notice invoking arbitration, Section 21 ACA fulfils various objects that are time-related. The receipt of such notice is determinative of the limitation period for substantive disputes as well as the Section 11 application, and also the law applicable to the arbitration proceedings.

35. Thus, it is evident that there are multifarious objectives served by a notice under Section 21 of the Act, including the determination of the period of limitation. Issue No. (ii) is answered accordingly.

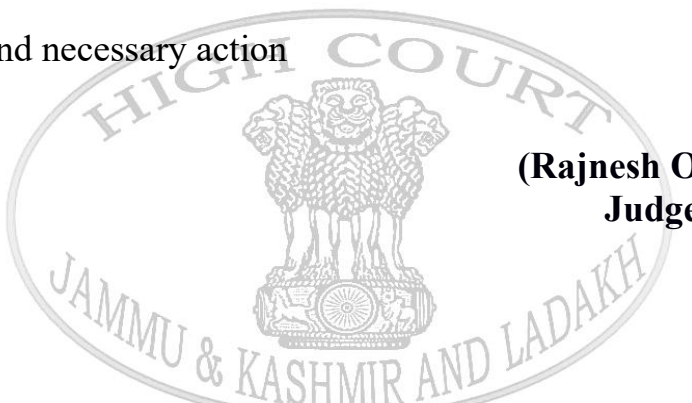
36. In view of the above, this petition is also allowed.

37. Mr. Justice V.C Koul, former Judge of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties in **AA No. 31/2014 and AA No.41/2015**

38. The parties shall be at liberty to submit their respective claims and counterclaims before the learned Arbitrator. They shall also be at liberty to raise all permissible issues, including the existence or validity of the arbitration agreement, before the learned Arbitrator, who shall proceed in the matter in accordance with law **The fee of the learned Arbitrator shall be governed by the provisions of Schedule IV to the Arbitration and Conciliation Act, 1996.**

39. The Registry shall send a copy of this order to the learned Arbitrator for information and necessary action

Jammu
11.09.2026
Madan Verma-Secy



(Rajnesh Oswal)
Judge

Whether order is speaking? **Yes/No.**
Whether order is reportable? **Yes/No.**