

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 26.12.2025
Pronounced on: 31.01.2026
Uploaded on: 31.01.2026

Whether the operative part or full
judgment is pronounced: Full

Arb P No. 72/2023

S P Singla Constructions Pvt. Ltd.
Kothi No. 47, Sector-9,
Panchkula, Haryana-134113
Through its Authorized
Representative

.... Petitioner(s)

Through:- Mr. Siddarth Jain, Advocate.
(through Virtual Mode).

V/s

Jammu and Kashmir State Power
Development Corporation Ltd.
Ashok Nagar Satwari,
Jammu(J&K), Pin-18000
Through its Managing Director

.....Respondent(s)

Through:- Ms. Monika Kohli, Sr. AAG

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

JUDGMENT

1. After the petitioner emerged as a successful bidder for allotment of contract for “**Investigation, Design and Construction of 178 m long Steel Bridge over river Chenab.**”, a letter of intent dated 26.03.2016 came to be issued in its favour, stipulating the period of completion of works as 18 months. Thereafter, an agreement was also executed between the parties on 14.05.2016 and in terms of the said contract, the work was to be completed on 02.12.2017. It is stated by the petitioner that the respondent was in continuous breach of its contractual obligations,

resulting into inordinate delay in the completion of the works. On account of such delays, the project could not be completed within the stipulated time period thereby causing tremendous loss to the petitioner. Between 2016 to 2023, multiple communications have been exchanged between the parties, and it is alleged by the petitioner that the petitioner kept the respondent informed about the various acts of breach committed by it causing significant loss to the petitioner and right of the petitioner to claim compensation for the same. Finally, the project was completed on 31.05.2019 and the defect liability period of three years “as stipulated under clause 29 of the said contract” started running from 31.05.2019 and concluded on 31.05.2022. Thereafter, the petitioner issued a letter dated 14.07.2023 to the respondent thereby consolidating its final amount/claims against the respondent relying upon clauses 32 and 41 of the said contract and requested the respondent to settle the same within 56 days of the receipt of the letter in terms of clause 41 of the said contract. The total amount as claimed by the petitioner is Rs. 18 crores, which is further subject to applicable interest and other claims to be valued subsequently.

2. The petitioner has made the claims under the following heads:
 - (i) Release of withheld amount;
 - (ii) Price Adjustment under clause 34.9.1 of the said Contract;
 - (iii) Price Adjustment to cater to actual rise in the cost of construction, being higher than price adjustment assessed under clause 26 of the said Contract;
 - (iv) Consideration to cater to time controlled costs incurred on account of the delays caused by the respondent;

- (v) Consideration for extension of Performance Bank Guarantees beyond intended time; and
 - (vi) Cost incurred for clearing land slides along with interest.
3. The petitioner notified the respondent that in the event of failure of amicable settlement of the above-mentioned claims of the petitioner, the same shall be referred to the arbitration. In the same communication, the petitioner also notified the respondent that the delay in submission of the final amount has been caused by the delay in discharge of performance of bank guarantee by the respondent as the bank guarantee was discharged only on 24.04.2023. For the respondent's failure in settling the claims of the petitioner in terms of the letter dated 14.07.2023, the petitioner served a notice dated 04.10.2023 upon the respondent for nominating the arbitrator on its own behalf within 30 days from the date of receipt of the said notice, so that both the nominee arbitrators may appoint the presiding Arbitrator and the arbitration proceedings may be initiated at earliest. The petitioner appointed Mr. A. M Choudhary, Former Chief Engineer, Punjab Agriculture Marketing Board, as its nominee Arbitrator. As the respondent failed to participate in the process of constituting the arbitral Tribunal, thereby appointing its nominee Arbitrator, the petitioner filed the petition under Section 11(6) of the Arbitration and Conciliation Act for appointment of Arbitrator.
4. Respondent has come up with the response stating therein that the petitioner has not approached this Court with clean hands and has suppressed the material facts while filing the present petition as the final payment submitted by the petitioner was accepted and settled "as it is" without raising any issue. This acceptance by the petitioner indicates clear

and unequivocal acknowledgement to the settlement of all claims and payments thereby precluding any subsequent disputes or claims relating to the same. It is further stated that no arbitration agreement exists in the tender documents and the disputes raised by the petitioner are not arbitrable. Having regard to the fact that the payment due to the petitioner has already been settled and accepted by the petitioner, the petitioner cannot now turn around and file the present petition for appointment of arbitrator. It is also contended that this petition is hopelessly time-barred, therefore, deserves dismissal. The respondent has admitted the execution of contract dated 14.05.2016.

5. It is further stated that the contentions made by the petitioner regarding the continuous breach of contractual obligations by the respondent and delay in execution of the project are grossly misconceived, false and frivolous and no delay has been occasioned on the part of the respondent. It is further stated that the original scheduled completion date under the contract was 02.12.2017, however, the completion of work was delayed to the combination of the factors including both the slow progress of the contractor and certain other factors. As all the delays were not attributed to the contractor, the same were duly addressed in accordance with the contractual provisions by granting appropriate extension of time and corresponding price adjustment, to ensure that the contractor is not unfairly penalized for the delay beyond his control. It is also the contention of the respondent that it cannot be held responsible and thrust with liability on account of the delays in execution of the project, which had purely and clearly occasioned due to the contractor's own slow progress. Any loss suffered by the petitioner due to delays attributable to

the contractor is solely the responsibility of the contractor. The multiple correspondences, including records of Review Meetings, were consistently exchanged between the parties, documenting the slow progress and various deficiencies on the part of the petitioner in achieving the desired rate of progress and these communications, highlighting the petitioner's failure to meet contractual obligations, have been duly recorded by JKSPDC. The work was completed on 30.05.2019 and a completion certificate was issued on 24.07.2019. The Defects Liability Period (DLP) concluded on 31.05.2022 without any unresolved claim. It is the positive stand of the respondent that no amount has been withheld by JKSPDC, and the respondent has already paid the price adjustments as admissible under the contract. The respondent has also given the factual rebuttal to the claims projected by the petitioner which may not be relevant to be extracted and considered by this Court at this stage.

6. Supplementary Affidavit has also been filed by the respondent along with Annexures, wherein the respondent has reiterated its contentions as raised in the objections. The respondent has placed on record final payment certificate, communications and undertaking furnished by the petitioner.
7. Rejoinder has also been filed by the petitioner stating therein that respondent without any justifiable reason failed to discharge the performance bank guarantee of the petitioner, which came to be discharged belatedly only on 24.04.2023. The petitioner has reiterated its claims of Rs. 18,30,94,154.00/- under clause 41 of the contract, which *inter alia*, include: (i) release of withheld amount; (ii) price adjustment for materials; (iii) other time-controlled costs; (iv) unlawful extension of Performance Bank Guarantee; (v) costs of clearing project site

impediments, and (vi) interest thereon. The petitioner has also relied upon clause 34.61 of the contract which states that the contractor may claim damages due and payable to it in accordance with the provisions of this agreement. Precisely, it is the contention of the petitioner that the objections sought to be raised by the respondent to object the appointment of the Arbitrator cannot be considered at all by this Court, as it is settled law that at the stage of section 11(6) of the Act, the limited scope of inquiry of the referral Court is to determine the prima facie existence of Arbitration agreement between the parties, and adjudication of the other issues which are mixed questions of law and fact fall within the exclusive domain of the arbitral Tribunal.

8. Learned counsel for the petitioner has submitted that in view of the arbitration clause, in case of any disputes or differences relating to interpretation and application of the provisions of the contract between the parties, such disputes/differences are required to be settled amicably and in case of failure, the same are required to be referred to arbitration. He has vehemently submitted that the petitioner had issued the initial notice to the respondent for settlement of disputes amicably and thereafter, another notice for nominating the arbitrator was also served upon the respondent but it did not yield any result. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in "***SBI General Insurance Company Ltd. v. Krish Spinning, 2024 SCC Online SC 1754***" to submit that mere acceptance of amount by the petitioner would not operate as a bar to invoke arbitration.
9. *Per contra*, Ms. Monika Kohli, learned Sr. AAG appearing on behalf of the respondent has submitted that as the petitioner has accepted the claim

as full and final settlement, the petitioner now cannot turn around and file application for appointment of Arbitrator. She has placed reliance upon the judgment of the Hon'ble Supreme Court of India in ***“Union of India & Ors. V. Master Construction Co. 2011 (12) SCC 349”***.

10. Heard and perused the record.
11. A perusal of the record reveals that in terms of Clause 25 of the General Conditions of the Contract, the arbitration shall be conducted in accordance with the Arbitral Procedure as laid down in the Special Conditions of the Contract. Further clause 3 of the “Special Conditions of the Contract” is extracted as under:-

“3.1 In the event of any disputes or differences relating to the interpretation and application of the provisions of the contract between the parties, same shall be settled to the extent possible amicably between the parties. In case, the parties are unable to settle the disputes amicably then the matter shall be referred to the Arbitration. The parties shall make efforts to agree on a sole Arbitrator, only if such an attempt does not succeed, then each party shall appoint one Arbitrator and third Arbitrator shall be nominated by the said two Arbitrators.

3.2 The Arbitration shall be governed under the provisions of J&K Arbitration and Condition Act 1997. The venue of the Arbitration proceedings shall be in the state of Jammu & Kashmir, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

3.3. The Arbitral Tribunal shall settle the disputes on the following terms: (a) The Arbitral Tribunal shall pass a speaking award with reference to each item of claim/dispute.

(b) The Tribunal shall not award pre-reference, pendentelite or future interest on any claim award in favour of any party.

(c) The cost of Arbitral proceedings shall be equally shared by the parties.

3.4 Notwithstanding the above, the parties shall continue to perform their respective obligations during the Arbitration proceedings.”

12. Pursuant to the above clause, any dispute arising from the interpretation or application of the contract must first be settled amicably. Should the parties fail to reach an amicable settlement, the matter shall be referred to

arbitration. The parties shall first attempt to appoint a sole arbitrator; failing agreement, each party may appoint one arbitrator, and those two shall nominate a third to serve as the presiding arbitrator.

13. The petitioner in terms of communication dated 14.07.2023 (Annexure V) requested the respondent to settle the dispute amicably and when it evoked no response, the petitioner vide notice dated 04.10.2023, nominated Mr. A. N. Choudhary, Former Chief Engineer, Punjab Agriculture Marketing Board, to act as an Arbitrator in terms of Special Conditions of Contract (clause-3) and simultaneously requested the respondent to appoint the Arbitrator within the period of 30 days from the receipt of notice. The respondent has not disputed the issuance of the communications dated 14.07.2023 and 04.10.2023 but has taken a positive stand that once the petitioner has accepted the full and final payment and has also furnished an undertaking whereby the petitioner has undertaken that it will forego their claims on account of delay not attributable to the contractor if JKSPDC grants extension of time upto 31.05.2019 for the subject work, without imposition of any sort of liquidated damages, and has accepted the payment as final settlement, the petitioner now cannot turn around and raise a dispute with regard to the settlement of claims.
14. Communication dated 20.06.2019, which bears the reference to undertaking also contains the stipulation that this undertaking shall not impact the contract provisions. Record demonstrates the existence of Arbitration agreement between the parties and now the only question is required to be examined whether the acceptance of the amount by the petitioner and furnishing of undertaking would preclude the petitioner from invoking the Arbitration mechanism under the contract or not.

15. This is true that the petitioner had sworn an undertaking that it would forego all its claims on account of delays not attributable to contractor, if JKSPDC grants extension of time to M/s S. P. Singla Constructions Pvt. Ltd. upto 31.05.2019 for completion of the above mentioned work and the defect liability period came to expire on 31.05.2022, but the bank guarantee was released only on 24.04.2023. The petitioner notwithstanding the execution of undertaking, has also claimed damages for delayed retention of the Bank guarantee.
16. The petitioner has raised certain claims which are seriously opposed by the respondent and I would not like to comment upon merits/demerits of the claims of the parties as it would be within the sole domain of the Arbitration Tribunal to adjudicate the same but prima facie it appears that there are disputes between the parties which are required to be adjudicated through arbitration.
17. In the judgment relied upon by the learned counsel for the respondent in ***“Union of India &ors. V. Master Construction Co.”***, it has been held that issuance of full and final discharge voucher or ‘no dues certificate’ amounts to discharge of contract by acceptance or performance and the party issuing the discharge voucher cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim. However, in its latest pronouncement in ***“SBI General Insurance Co. Ltd. v. Krish Spinning”***, the Hon’ble Supreme Court of India has observed as under:-

“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).

115.The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction.”

116.The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. **Thus, negative effect of competence- competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.**

117.By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, **the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal does not in any way mean that the referral court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk back on its contractual undertaking.** On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of “accord and satisfaction” before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.”

(emphasis added)

18. In light of the above judgment of larger Bench (3 Judges), it can be safely inferred that once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of accord and satisfaction before tribunal and only after such objection is rejected by arbitral tribunal, the claims raised by the claimant can be adjudicated. In the instant case also, the objection raised by the respondent is that once the undertaking has been

furnished and the payment has been accepted by the petitioner, the petitioner cannot invoke arbitration. As per the mandate of the Hon’ble Supreme Court of India in “**SBI General Insurance Co. Ltd. v. Krish Spinning (Supra)**” the said issue can be conveniently adjudicated by the learned Arbitral Tribunal.

19. In view of the above, Arbitral Tribunal comprising of the following members is hereby constituted:

- I. Mr. Justice Tashi Rabstan, Former Chief Justice of High Court of Jammu and Kashmir and Ladakh, residing at Plot No. 2, Lane No. 13, Tawi Vihar, Sidhra, Jammu -180019 as presiding Arbitrator;
 - II. Mr. A. N. Choudhary, Former Chief Engineer, Punjab Agriculture Marketing Board to act as Arbitrator; and
 - III. Mr. Suneet Gupta, Retired District and Session Judge, residing at Sarwal, Jammu to act as Arbitrator.
- Registry to inform the above named Arbitrators about their appointment as an Arbitrator in this matter.

20. Needless to say that any observation made above is solely for the purpose of adjudicating the application filed by the petitioner under Section 11 of the Arbitration of Conciliation Act and shall have no bearing upon the merits of the claims of the parties.

21. The petition is, accordingly, **disposed of**.

(Rajnish Oswal)
Judge

JAMMU
31.01.2026
NEHA-1

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes