

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CARBA No. 25 of 2026
Decided on: 01.10.2026

State of Himachal Pradesh & Anr.	...Appellants
Versus	
M/s Ech Ess Builders	...Respondent

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹

For the Appellants:	Mr. Sanjay Dutt Vasudeva, Deputy Advocate General.
For the respondent:	Mr. T.S. Bhogal & Ms. Swati Verma, Advocates.

Sandeep Sharma, J. (Oral)
CARAP(M) No.7 of 2025

By way of instant application, prayer has been made on behalf of the applicants/appellants for condonation of delay in filing the accompanying appeal, which is barred by limitation.

2. Having carefully perused the averments contained in the application, which is duly supported by an affidavit, this Court is convinced and satisfied that delay in maintaining the accompanying appeal is neither intentional nor deliberate, rather same has occurred on the account of the lengthy administrative process and as such, delay in filing the appeal, which in my considered view has been sufficiently explained, is condoned. The appeal be registered. The application stands disposed of.

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3. By way of present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, challenge has been made to

¹ Whether reporters of the local papers may be allowed to see the judgment?

judgment dated 09.08.2024 passed by the learned District Judge, Kinnaur in Arb. Case No. 01 of 2020, whereby objections under Section 34 of the Act *ibid*, against award dated 05.12.2019 passed by Arbitrator-cum-Superintending Engineer, Arbitration Circle, HP.PWD, Solan, have been dismissed.

4. Brief facts of the case are that the work was awarded to the respondent/contractor M/s. Ech Ess Builders vide letter No. PWKNR-E-Tender/2005-06-7509 dated 23-12-2005 of Executive Engineer, Kalpa Division, HPPWD, Kalpa amounting to ₹ 1,60,14,743/- with completion period of two years. Respondent has stated that he was executing the said work to the satisfaction of the officials concerned and intended to complete and hand over the work within the shortest possible time but on account of the fact that the site for the work started sliding in the rainy season of 2010, the work was ordered to be stopped which aspect was pointed out by the respondent vide letter dated 19-01-2011. Thereafter, no instructions were issued to the respondent for the execution of the work, as a result of which the infrastructure and staff specifically arranged for the work rendered idle and the respondent had to bear the infructuous expenses to the tune of ₹ 50,000/- per month and the amount on this account comes to ₹ 25,00,000/-. The work was to be completed within two years but the same could not be completed within the stipulated period as the designs and drawings for the work were not made available. The respondent had spent an amount of ₹ 25,000/- for getting the design prepared and approached M/s. Infrastructure Engineering Services, Sundernagar for refund of the amount paid at the instance of the petitioner but the amount has not been refunded to the

respondent till date. The work remained closed since October/November, 2010 as huge cracks had developed in the entire area and since then, no further instructions in respect of execution of the work were given to the respondent in spite of repeated requests. Since the work was being prolonged for no fault on the part of the respondent, the respondent vide letters dated 28-07-2010, 22-06-2012 and 02-04-2013 requested for being compensated for the increased cost of executing the works but to no avail. The respondent was pressing the authorities to close the contract and to pay for the work done but such requests were not considered. The cost of the work remaining to be paid to an extent of ₹ 1,50,000/- besides which an amount ₹ of 9,00,000/- is also due on account of price escalation in terms of the contract. The amount of security to the tune of ₹ 3,53,092/- also continued to be withheld in addition to the amount of ₹ 1,30,650/- which had been deposited by the respondent as an earnest money and the same was not refunded. In view of the forced prolongation of the work, the respondent had been compelled to incur additional overheads @ ₹35,000/- per month and as such additional overheads incurred by the respondent to an extent of ₹25,20,000/- are liable to be awarded in his favour. The respondent has also claimed cost of the proceedings and interest from the date of cause of action till the date of realization @ 18% per annum.

5. The Arbitrator, after hearing the parties, passed the award and allowed simple interest @ 8% per annum on ₹ 4,46,039/- from the date of reference i.e. 27-11-2013 to the date of payment i.e. 22-08-2019

and simple interest @ 8% per annum on ₹ 2,52,492/- from the date of reference i.e. 27-11-2013 to the date of payment i.e. 04-08-2017.

6. Feeling aggrieved, appellants and respondent preferred Objections under Section 34 of the Act *ibid* in the court of learned District Judge, Kinnaur Civil Division at Rampur Bushahr, District Shimla, Himachal Pradesh, which came to be registered as Arbitration Case No. 1 of 2020, respectively. The objections were instituted on 17.07.2020.

7. Nonetheless, learned District Judge, vide judgment dated 09.08.2024, dismissed both the objections and upheld the award passed by Arbitrator. Feeling aggrieved, the appellants have approached this Court, in the instant proceedings, laying challenge to the judgment passed by learned District Judge, on various grounds as mentioned in the appeal.

8. However, before going into the claim and counter-claim of the parties, it would be relevant to note that the dispute in question is a commercial dispute, as per Commercial Courts Act, 2015, wherein 'commercial dispute' has been defined as under:

“(c) “commercial dispute” means a dispute arising out of—

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- (ii) export or import of merchandise or services;
- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;

- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

9. The Commercial Courts Act, 2015, was notified vide Act No.4 of 2016 and as per S. 1(3), (3) it shall be deemed to have come into force on the 23rd day of October, 2015. S.3 of aforesaid Act,

provides that the State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act, however, fact of the matter is that commercial courts at District level were notified vide Notification dated 13.5.2026 by the Home Department, Government of Himachal Pradesh, whereby Civil Judge can decide commercial disputes of Rs.3.00 Lakh to Rs.30.00 Lakh, Senior Civil Judge, Rs.30.00 Lakh to Rs.60.00 Lakh and District Judge/Additional District Judge from Rs.60.00 Lakh to Rs.1.00 Crore.

10. Coming to facts of present case, when objections were presented by appellants and the respondent to learned District Judge on 17.07.2020, said court was not designated as 'commercial court' in terms of Section 3 of 2015 Act and as such, it had no jurisdiction to entertain the dispute, same being a 'commercial dispute'.

11. Aforesaid position has been clarified by co-ordinate Benches of this Court in **Nitin Sonkhia v. Executive Engineer HPPWD Mandi Division No.II, Distt. Mandi, H.P.** CARBA No. 07 of 2025, decided on 19.3.2026, wherein, it has been held as under:

"5. Having heard the learned Counsel for the parties and having perused the statutory provisions of the Commercial Courts Act and taking into consideration the fact that the dispute in hand relates to a commercial dispute, this petition is allowed by holding that the judgment passed by the learned District Judge in the objections filed by the present petitioner under Section 34 of the Arbitration and Conciliation Act against the arbitral award, details whereof are given herein above, is nonest and without jurisdiction.

6. Sub-section (1) of Section 3 of the Commercial Courts Act inter alia provides that the State Government may, after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under the said Act.

7. Sub-section (2) of Section 3 of the Act further provides that State Government shall, after consultation with the concerned High Court, by notification specify, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

8. Similarly, Sub Section (3) thereof provides that State Government may, with the concurrence of the Chief Justice of the High Court, appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court either at the level of District Judge or a Court below the level of a District Judge.

9. Therefore, in order for a Court to excise the power of Commercial Court, the procedure prescribed under Section 3 of the Commercial Act, should have been complied with. As admittedly in the present case, neither at the time of filing of the objections or at the time of adjudication thereof, the Court in issue stood constituted as a Commercial Court, nor the provisions of Sub Sections (2) and (3) of Section 3 of Commercial Courts Act were complied with, the judgment under challenge passed by learned District Judge is per se without jurisdiction."

12. Aforesaid position was reiterated by same Co-ordinate Bench of this Court in **State of Himachal Pradesh and another v. Dina Nath**, CARBA No. 1 of 2026, decided on 9.7.2026. Since the very institution of objections, which involve a 'commercial dispute' arising out of tender, is defective, this court would refrain from going into merits and demerits of the arguments advanced by respective parties, who were

unable to dispute that learned District Judge, Mandi, having not been notified as 'commercial division' under Commercial Courts Act, as late as 2026, had no jurisdiction to try the dispute, present petition is disposed of; judgment dated 08.07.2025 passed by learned District Judge, Mandi in Arbitration Case No. 202 of 2023 is set aside and learned District Judge, Mandi is directed to return the objections filed by appellants and the respondent, to it for presenting the same before appropriate forum, in accordance with law, especially, S.3 of Commercial Courts Act. However, it is ordered that the period from the date of institution of present appeal till supply of a certified copy of this order to appellants and the respondent, shall be excluded while calculating limitation.

13. The appeal is accordingly disposed of, alongwith all pending applications.

(Sandeep Sharma)
Judge

October 01, 2026
(sunil)