

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CARBA No. 6 of 2026
Decided on: 25.09.2026

State of Himachal Pradesh & Ors. ...Appellants

Versus

Nitin Sonkhla ...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. Gunjan Sharma, Advocate.

Sandeep Sharma, J. (Oral)

By way of present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, challenge has been made to judgment dated 05.11.2024 passed by learned District Judge, Mandi in Arb. Case No. 39 of 2023, whereby objections under Section 34 of the Act *ibid*, against award dated 13.02.2023 passed by Arbitral Tribunal (Former District & Sessions Judge), have been dismissed.

2. Brief facts of the case are that work for construction of "MT& CD on Gokhara Nichla Lot Khajron Road KM 0/0 to 6/0 (SH: - C/O R/Wall, B/Wall, MT & CD Work essential Parapets and Drain in KM 0/0 to 6/0) under NABARD RIDF-XVI vide agreement No. 102 of 2011-12 was awarded to the respondent/contractor Sh. Nitin Sonkhla, Govt. Contractor, House No. 59/6, Samkhetar Bazar, Dist. Mandi (H.P.) vide Executive Engineer, Mandi Division No:-II, HPPWD, Mandi letter No:-

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

PW/MDIICB/TA-Tender/07-08/12646- 50 dated 07.09.2011 for Rs.1,63,79,522/- after the tender of L1 contractor was duly approved for acceptance by the office of the Chief Engineer (MZ) vide letter No. PW-CE(MZ)-CTR-I-MI(RY11-10403-05 dated 26.08.2011 which approval was conveyed by the Superintending Engineer, Circle, HPPWD, Mandi vide letter No. 12016-18 dated 03.09.2011 and this tender was awarded to the respondent/contractor on 07.09.2011 with the time limit of three years for the completion of the awarded work. Parties entered into formal agreement numbered 102 of 2011-12. Stipulated date of commencement and completion of work were 22.09.2011 and 21.09.2014. The 10% liquidated damages amounting to Rs.16,37,952/- was imposed by the respondent on dated 30.05.2014 on account of non-completion of work and the work was rescinded by the respondent/Executive Engineer on 12.05.2015.

3. Thereafter, the claimant/contractor sought arbitration in the case at hand and Sh. Ajay Gupta, Chief Engineer(MZ) HPPWD, Mandi vide letter No.PW-CE(MZ)CTR-1, ARB, Kokhara Nichla Lot Khajron road/2021-7368-72 dated 17.08.2021 appointed Sh. Ashok Kumar Chauhan, Engineer-in-Chief, H.P.P.W.D. Retd. House No.47, New Friends Enclave Colony Katheli, P.O. Bajaura, Tehsil Bhuntar District Kullu, H.P. as Sole Arbitrator to adjudicate the claim between the parties under clause 25 of the Agreement No.102 for 2011-12. The contractor /claimant before the Ld. Arbitrator claimed the following reliefs:

1)	Claim No 1:	Wrong levy of compensation under clause-2 of agreement (though initially nothing was received under clause 2 but after three and half years of
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		recession, unilaterally a bill was prepared and the computation has given affect for Rs 81,897.61.
2)	Claim No 2:	Loss of profit for remaining work of Rs 40,56,941/- out of Rs 1,63,79,522/- on account of wrong and illegal termination amounting Rs 6,08,526/-
3)	Claim No3:	Less payment against the work executed amounting to Rs 8,87,141.66.
4)	Claim No 4:	Release of security deposit amounting to Rs 1,81,151/-.
5)	Claim No 5:	Site and office overheads due to prolongation of contract amounting Rs.3,62,222.22/-
6)	Claim No 6:	Loss of material under clause -13 of the contract agreement on sudden termination of the contract amounting to Rs.8,00,000/-.
7)	Claim No 7:	Revised rate of work executed much beyond the deviation limit under clause 12a of the agreement amounting to Rs.4,44,162/-
8)	Claim No 8:	Non-payment under clause 10-cc amounting to Rs.4,45,694/- up to 19 running bill only and balance in 20h "Final Bill" to be revised.
9)	Claim No 9:	Effecting illegal recovery of stone from claimant bill of Rs.1,16,176/-
10)	Claim No.10:	Claim on account of pre-pendente-lite interest under section 31(7)a.
11)	Claim No.11:	Claim on account of post pendente-lite interest under section 31(7)b.
12)	Claim No. 12:	Claim on account of litigation

4. Learned Arbitrator passed award dated 13.02.2023, In favour of the respondent/contractor and against the appellants/ objectors to the following effect:

Sr. No.	Claim items	Amount demanded	Amount Awarded	Remarks
1.	Claim No.1	Rs.81,897.61	Rs.81,898/-	-
2.	Claim No.2	Rs.6,08,526/-	NIL	-
3.	Claim No.3	Rs.8,87,141/-	Rs.19,187/-	-
4.	Claim No.5	Rs.1,81,151/-	Rs.1,81,151/-	-
5.	Claim No.6	Rs.3,62,222.22	NIL	-
6.	Claim No.7	Rs.8,00,000/-	Rs.54,063/-	-
7.	Claim No.8	Rs.4,44,162/-	Rs.5,41,065/-	-

8.	Claim No.9	Rs.4,45,694/-	Rs.2,36,200/-	-
9.	Claim No.10	Rs.1,16,176/-	NIL	-
10.	Claim No.11	Claimed the interest on awarded amount on commercial rate	Rs.7,07,011/-	-
11.	Claim No.12	Demanded interest @18% p.a	Simple interest @ 9% p.a.	-
12.	Claim No.1	Cost of memo not submitted	NIL	-
		Total	Rs.18,20,575/-	-

5. Feeling aggrieved, appellants and respondent preferred Objections under Section 34 of the Act *ibid* in the court of learned District Judge, Mandi Division, District Mandi, Himachal Pradesh, which came to be registered as Arbitration Case No. 451 of 2024. The objections were instituted on 06.06.2024.

6. Nonetheless, learned District Judge, *vide* judgment dated 05.11.2025, 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.

7. 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;”

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

9. Coming to facts of present case, when objections were presented by appellants and the respondent to learned District Judge on **12.06.2023 and 06.06.2024, respectively**, 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’.

10. 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.”

11. 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, Division Mandi, District 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 05.11.2024 passed by learned District Judge, Division Mandi, District Mandi in Arbitration Case No. 451 of 2024 is set aside and learned District Judge Division Mandi, District 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, Section 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.

12. The appeal is accordingly disposed of, along with all pending applications.

(Sandeep Sharma)
Judge

September 25, 2026
(sunil)