Sr. No.3

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINGAR

RP 20/2025
InArb P 15/2023

M/S MIR SONS CONSTRUCTIONS PVT. LTD …Petitioner(s)/appellant(s)

Through: Mr. B. A. Malla, Advocate

Vs.

UNION TERRITORY OF J AND K AD ORS ...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R
30.10.2026

1. The present petition is a review petition against the order passed earlier on 06.12.2024, inwhich the arbitration application was rejected on the ground of delay of 22 years.Meanwhile, the Court dealt at length with Sections 21 and 43 of the Act, which deal withthe commencement of arbitral proceedings, including the limitation that applies underSection 9.

2. The counsel for the review petitioner has tried to persuade this Court that the law invokedunder the Jammu and Kashmir Arbitration and Conciliation Act, 1997, did not have anytime-bound requirement for the initiation of arbitral proceedings.

3. He also placed a reliance upon a judgment of the Hon'ble Apex Court in the matter of**Aslam Ismail Khan Deshmukh Vs. ASAP fluids Pvt. Ltd. And Anr,** in Arbitration PetitionNo. 20 of 2019, with particular reference to paragraphs 38, 39 and 40, which reads asunder:

> *38. In light of the aforesaid observations, the ratio of Arif Azim (supra) was reconsidered by this very Bench in SBI General Insurance Co. Ltd. v. Krish Spinning reported in 2024 SCC OnLine SC 1754. The position of law was clarified as thus:*
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> > ***128.*** *On the first issue, it was observed by us that 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.*

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132. *Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia (supra) and NTPC v. SPML (supra). However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in In Re : Interplay (supra).*

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).

134. The observations made by us in Arif Azim (supra) are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of Arif Azim (supra), which shall be given full effect to notwithstanding the observations made herein."

(Emphasis supplied)

39. Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the Act, 1996, the referral court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral court to indulge in Arbitration Petition No. 20 & 22 of 2019 Page 26 of 31 an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time barred. Such a determination must be left to the decision of the arbitrator. After all, ina scenario where the referral court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the arbitral tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.

40. As observed by us in Krish Spinning (supra), the power of the referral court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral court delves into the domain of the arbitral tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of

leaving the claimant remediless for the adjudication of their claims. Moreover, the Courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the Courts may take a second look at the adjudication done by the arbitral tribunal at a later stage, if considered necessary and appropriate in the circumstances.

4. The learned counsel for the respondent, however, submitted if any intricate enquiry were required regarding the time lag, the matter could certainly have been left to the Arbitrator. However, when a delay of 22 years is writ large on the face of the record, and this Court is exercising its limited jurisdiction in a review petition, no interference is warranted.

5. This Court after hearing the counsel for the parties is of the opinion that once the petitioner himself had approached the Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, he ought to stick to such law for the purpose of the review as well.

6. The record indicates a delay of 22 years, and thus Sections 9, 21, and Section 43 on a conjoint reading do not permit any indulgence of the Court in this limited jurisdiction.

7. The petition is, accordingly, dismissed.

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR
30.10.2026
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