

2026 SCC OnLine J&K 616

In the High Court of Jammu and Kashmir and Ladakh[±]
(BEFORE SANJEEV KUMAR, ACTING C.J.)

Abraq Infrastructures LLP ... Petitioner/Appellant(s);
Versus

UT of J & K and Others ... Respondent(s).

Arb P 11/2026

Decided on August 21, 2026

Advocates who appeared in this case:

Mr. Mohammad Yawar Hussain, Advocate

Mr. Waseem Gul, GA

The Order of the Court was delivered by

SANJEEV KUMAR, ACTG. C.J.:— The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking appointment of an Arbitrator to adjudicate disputes between the parties arising out of the agreement dated 16-08-2018, executed pursuant to allotment dated 17-11-2017, in respect of construction of National Institute of Fashion Technology (NIFT), Package-III, Ompora, Budgam, at an allotted cost of Rs. 43,99,92,907/- against an advertised cost of Rs. 59.92 crores.

2. Briefly stated, the petitioner's case is that on account of repeated interference by the respondent-Department, variation in quantities of items of work, and consequent disputes, the contract came to be terminated vide letter dated 05-02-2024 and the respondents thereafter issued successive NITs dated 10-02-2024 and 21-06-2024 for the balance/left-over work. These actions were assailed by the petitioner before the Additional District Judge (Designated Commercial Court), Srinagar and before this Court in AA No. 08/2024 and WP(C) Nos. 1434/2024, 2604/2024 and 873/2025. The said proceedings culminated in the impugned NITs being withdrawn by the respondents from time to time, and finally, vide order dated 18-04-2026, WP(C) Nos. 1434/2024 and 2604/2024 came to be withdrawn by the petitioner with liberty to invoke the arbitration clause in the agreement.

3. The petitioner thereafter issued notice dated 18.12.2025 under Section 21 of the Act, invoking Clause 34 of the agreement dated 16.08.2018. It is averred, and not disputed by the respondents, that no reply was furnished to the said notice.

4. Upon appearance of the respondents, the respondents have filed their objections, resisting the petition by raising the following

preliminary objections:

- (i) that the petitioner committed default in completion of the allotted work, necessitating termination of the contract and completion of the balance work through a substituted contractor at higher cost;
- (ii) that repeated filing and withdrawal/dismissal of proceedings by the petitioner on the same cause operates as *res judicata*/estoppel and renders the present petition liable to be dismissed in limine;
- (iii) that the petitioner, having already been paid for the work executed by him, has no locus to seek arbitration after termination of the contract; and
- (iv) that a similar arbitration application by the petitioner, on the similar contents, is stated to be pending disposal before the Court of the Additional District Judge (Commercial Court), Srinagar.

5. Heard learned counsel for the parties and perused the material on record.

6. Clause 34 of the agreement dated 16-08-2018 provides that all disputes between the parties arising in the contract, including interpretation of its terms, shall, after written notice by either party, be referred to a sole arbitrator whose decision shall be binding on the parties. The existence of this arbitration clause, and of the agreement itself, is not disputed by the respondents. What is disputed is the maintainability of the claim and the entitlement of the petitioner to relief, on the grounds noticed in paragraph 4 above.

7. It is well settled that at the stage of a petition under Section 11 (6) read with Section 11(6A) of the Act, the scope of judicial scrutiny by the Referral Court is confined to examining the *prima facie* existence of a valid arbitration agreement. Contentious issues such as alleged default of the petitioner-contractor, accord and satisfaction/full and final payment, the effect of prior withdrawal or dismissal of related proceedings, limitation, and the effect of any parallel proceeding pending before the Additional District Judge (Commercial Court), Srinagar, are matters touching the merits and arbitrability of the claim. These are for the Arbitral Tribunal to examine and decide under Section 16 of the Act, on the well-recognised principle of *kompetenz-kompetenz*. This Court, therefore, refrains from returning any finding on the merits of the rival contentions of the parties, all of which including the preliminary objections raised by the respondents are left open to be urged before, and decided by, the learned Arbitrator in accordance with law.

8. A further aspect requires notice. Clause 34(II) of the agreement stipulates that the "Managing Director SIDCO or as proposed by him/her, in case party(ies) does not agree, shall be sole arbitrator for

the disputes in between SIDCO and the parties.” The Managing Director, SIDCO being an employee of respondent No. 1, and thus a person having an interest in the outcome of the dispute, is rendered ineligible, by operation of Section 12(5) read with the Seventh Schedule of the Act (as inserted by the Arbitration and Conciliation (Amendment) Act, 2015), to act as Arbitrator. It is equally well settled that a person who is himself ineligible to act as Arbitrator cannot nominate another person to act as such, as such a course would defeat the very purpose of the neutrality and independence sought to be ensured by the 2015 Amendment (*TRF Ltd. v. Energo Engineering Projects Ltd.*, (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760 : AIR 2020 SC 59). Clause 34(II) of the agreement, to the extent it designates the Managing Director, SIDCO or his nominee as sole arbitrator, is accordingly rendered unworkable, and it becomes the duty of this Court, in exercise of power under Section 11(6) of the Act, to appoint an independent Arbitrator.

9. For the foregoing reasons, this petition is allowed. Mr. Mehrajuddin Sofi, Retired District and Sessions Judge, Mobile No. 9419970965 is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes that have arisen between the parties under the aforesaid contract.

10. The learned Sole Arbitrator shall, upon entering reference, issue notice to the parties and proceed with the arbitral proceedings strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be entitled to charge his fee in terms of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

11. Registry shall communicate a copy of this order to the learned Sole Arbitrator forthwith for information and necessary compliance.

12. The petition, along with all connected applications, shall stand disposed of.

[†] Principal Bench at Srinagar

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