

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

Reserved on: 09.04.2026

Pronounced on: 24.04.2026

Uploaded on: 24.04.2026

Whether the operative part
or full judgment is
pronounced: **Full**

Arb P. No.31/2023

M/S MARSHAL TRADERS

...PETITIONERS/APPELLANT(S)

Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Rehana Fayaz, Advocate.

Vs.

J&K PROJECT CONSTRUCTION CORPORATION
AND ANOTHER

...RESPONDENT(S)

Through: - Mr. Waseem Gull, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"), has sought appointment of an independent Arbitrator for adjudication of disputes that have arisen between the parties.

2) As per case of the petitioner, pursuant to NIT bearing No.Mech/004 of 2008 dated 24.01.2008, it was allotted the work vide work order No.DGM/Mech/1215-20

dated 22.10.2008 for Drilling of Borewell for exploration of ground water through 500mm Diameter Borehole with ODEX/DTH/Reverse Rotary method at District Hospital, Baramulla and Sub District Hospital, Sopore at a cost of Rs.17,26,250/. It has been submitted that after allotment of the work, the petitioner completed the same and submitted final bill to the respondents for payment.

3) According to the petitioner, the amount in respect of the bills pertaining to works undertaken at District Hospital, Baramulla, was released whereas the amount in respect of the bills relating to works undertaken at Sub-District Hospital, Sopore, was not released by the respondents. It has been further submitted that even 5% of the security deposit of Rs.86,312/ has been retained by the respondents. The amount of unpaid bills in respect of the works executed at Sub-District Hospital, Sopore, is stated to be Rs.10.27 lakhs. It has been submitted that the respondents, despite verification of the works executed at Sub-District Hospital, Sopore, did not release the payment in favour of the petitioner solely on the ground that funds were not available.

4) It has been contended that the petitioner filed a writ petition bearing OWP No.547/2013 before this Court which came to be decided on 21.10.2020 holding that the

same is not maintainable. However, it was left open to the petitioner to seek appropriate remedy.

5) According to the petitioner, there is an arbitration clause in the allotment order which provides for resolution of disputes through the mechanism of arbitration by appointment of two Arbitrators, one to be nominated by the Department and the other to be nominated by the petitioner firm. It has been submitted that the petitioner, vide its letter dated 09.11.2022 read with letter dated 15.06.2023, invoked the arbitration clause asking respondent No.1 to appoint the Arbitrator on behalf of the Department. However, when no action was taken by the respondents, the petitioner was compelled to file the present petition.

6) Reply to the petition stands filed by the respondents in which it has been submitted that the previous writ petition filed by the petitioner stands already dismissed by this Court, as such, it cannot again re-agitate the claim. It has been contended that in respect of the works executed by the petitioner at District Hospital, Baramulla, an amount of Rs.13.79 lakhs stands released in its favour. According to the respondents, the petitioner has not executed any work at Sub-District Hospital, Sopore, which is clear from the available records. It has

been submitted that after a lapse of four years from the date of issuance of allotment order, the petitioner started asking for payment when the concerned officers had already superannuated from service.

7) According to the respondents, there is no sign of the petitioner having executed the work of Drilling of Borewell at Sub-District Hospital, Sopore, and, as such, it cannot lay claim on the basis of non-existent works. It has been contended that when the petitioner submitted its bills relating to work at Sub-District Hospital, Sopore, the same, it appears, were not entertained by Deputy General Manager as, upon visit to the site, he had found that no works had been executed by the petitioner.

8) I have heard learned counsel for the parties and perused record of the case.

9) The main objection that has been raised by learned counsel for the respondents with regard to maintainability of the petition is that the claim projected by the petitioner in the instant petition is stale and time barred and, thus, the same has become dead and non-arbitrable. It has been contended that even the letters seeking invocation of arbitration clause issued by the petitioner are hopelessly barred by time and, as such, the present petition is not maintainable.

10) In order to determine the merits of the aforesaid contention of the respondents, it would be apt to understand the legal position regarding the scope of jurisdiction of the referral court. The Supreme Court has, in the case of **Vidya Drolia v. Durga Trading Corporation**, (2021) 2 SCC 1, while dealing with the scope of power of the Referral Court under Sections 11 and 8, held that at the referral stage, if it is found that the claims are ex-facie time barred and dead and there is no subsisting dispute, the reference can be refused.

11) In **Bharat Sanchar Nigam Ltd. v. M/S Nortel Networks India Pvt. Ltd.**, (2021) 5 SCC 738, the Supreme Court has held that it is only in very limited category of cases, where there is not even a vestige of doubt that the claim is ex-facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. It has been further observed that even if there is slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the Arbitral Tribunal.

12) In **NTPCL Limited vs. SPML Infra Limited**, (2023) 9 SCC 385, the Supreme Court, while discussing the scope of jurisdiction of the Court under Section 11(6) of

the Act, held that the pre-referral jurisdiction of the Courts under Section 11(6) of the Act is very narrow and it inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

13) In Aslam **Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd.**, (2025) 1 SCC 502, the Supreme Court has, after surveying its previous judgments on the issue, held that 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. It has been held that at this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.

14) From the foregoing analysis of the legal position, it is clear that at the time of considering a petition under Section 11(6) of the Act, unless it is shown that the claim

is ex-facie time barred or hopelessly time barred, the Court exercising power under Section 11(6) of the Act for appointment of Arbitrator should not reject such application. If there is slightest doubt with regard to arbitrability of the claim on account of it being time barred, the issue for determination in this regard should be left to the Arbitrator and the Court while exercising its power under Section 11 of Act should not venture to determine the said issue at reference stage.

15) With the aforesaid legal position in mind, let us now analyse the facts of the present case. Undoubtedly, even as per case of the petitioner, the work was allotted to it in the year 2008 and as per its own admission, the work was executed immediately thereafter and the bills were submitted with the respondents. According to the petitioner, an amount of Rs.10.27 lakhs relating to works executed at Sub-District Hospital, Sopore, has not been released in its favour and besides this, security deposit of Rs.86,312/ has also not been released in its favour by the respondents. Letter invoking arbitration clause has been issued by the petitioner firstly on 9th November, 2022 and thereafter the corrected letter has been issued on 12.06.2023.

16) At first blush it appears that claim of the petitioner regarding recovery of the amount of bills in respect of the

works executed in the year 2008/09 had become stale and time barred by the time the petitioner issued the invocation letters. However, record of the Writ Court (OWP No.547/2013) would reveal that the petitioner had pleaded that vide communication dated 14.09.2009 of the respondents, it was informed that there is paucity of funds. According to the petitioner, he had submitted his invoice dated 12.01.2009 duly verified by the Manager, Mechanical Sub Division, JKPC, Barzulla, Srinagar, and it was certified that the Drilling of Borewell in Sub-District Hospital, Sopore, had been done prior to January, 2009. It has been pleaded that petitioner had sought release of payment vide its letter dated 18.10.2012. It has also been pleaded in the said writ petition that vide letter dated 22.10.2012, the Incharge Mechanical Work Zone 1st, Baramulla/Kupwara, informed the Deputy General of the respondent-Corporation that the petitioner has completed the work and the payment deserves to be released in his favour. It has been further pleaded that legal notice dated 31.10.2012 was served by the petitioner upon the respondents which was responded to by the respondents in terms of communication dated 17.01.2013.

17) From the aforesaid pleadings of the petitioner which were narrated by it in the writ petition, prima facie, it

appears that his claim with regard to release of payment for works undertaken at Sub-District Hospital, Sopore, was subject matter of discussion between the parties until the date of filing of the writ petition. The same was filed on 02.05.2013. The writ petition was ultimately dismissed by this Court in terms of order dated 21.10.2020 by observing that the case involves complicated disputed questions of fact which cannot be adjudicated upon in writ jurisdiction. The relevant portions of order dated 21.10.2020 are extracted as under:

“Be that as it may, the petition on hand involves complicated disputed questions of fact which cannot be adjudicated upon in writ jurisdiction. Whether or not the petitioner has executed the work, and if he has executed the work, whether or not any payment is due to him are all disputed questions of fact. The remedy of the petitioner, therefore, lies somewhere else. Knowing the fate of his petition, particularly after the filing of the objections by the respondents, the petitioner has lost interest and has not pursued this petition after 3-5-2013.

For all these reasons, this petition is held not maintainable and the same is accordingly dismissed. However, it shall be open for the petitioner to seek appropriate remedy if his grievance for non-payment still survives.”

18) After the dismissal of writ petition by virtue of afore-quoted order, the petitioner, in order to take resort to appropriate legal remedy, invoked arbitration clause contained in the allotment order which provides for resolution of disputes through mechanism of arbitration. This was done by the petitioner through the medium of communication dated 9th November, 2022 read with

communication dated 12.06.2023. Thus, the petitioner has invoked the arbitration clause within the prescribed limit of three years from the date of dismissal of his writ petition and the present petition under Section 11(6) of the Act of 1996 has been filed within three years of invocation of arbitration clause.

19) Even if it is assumed that the cause of action in favour of the petitioner had arisen in the year 2009 itself when, according to the petitioner, he had completed the execution of work at Sub-District Hospital, Sopore, still then it cannot be stated that the claim of the petitioner is *ex-facie* time barred. This is so because there is material on record to show that the petitioner was pursuing the writ petition before this Court which was ultimately held to be not maintainable on account of involvement of disputed questions of fact. *Prima facie*, it appears that the petitioner has the right to seek exclusion of time taken in pursuing the remedy before a wrong forum by relying upon the provisions contained in Section 14 of the Limitation Act. The petitioner can very well plead before the Arbitrator that he was prosecuting the proceedings before a wrong forum in good faith and claim exclusion of the period during which the writ petition remained pending before this Court. Thus, it cannot be

stated that the claim of the petitioner is *ex-facie* time barred, though this issue has to be gone into and analysed by the Arbitral Tribunal before considering the claim of the petitioner on merits. This Court, while exercising its power under Section 11(6) of the Act of 1996, cannot go into this issue and it is only the Arbitral Tribunal who can go into all these issues during the arbitral proceedings.

20) For the aforesaid reasons, the objection raised by the respondents to the maintainability of this petition and non-arbitrability of the claim of the petitioner on account of the same being time barred, is rejected. Once it is held that the issue with regard to arbitrability of the claim of the petitioner on the ground of limitation is a matter which is required to be gone into by the Arbitral Tribunal and once it has been found that there is an arbitration clause existing between the parties, which has been invoked by the petitioner without any response from the respondents, there is no other option available with this Court but to refer the dispute arising between the parties to the Arbitral Tribunal.

21) Accordingly, the petition is disposed of by referring the disputes and differences covered by the agreement, to the learned Sole Arbitrator in the following terms:

- (I) Mr. Gowhar Majid Dalal (Former District and Sessions Judge) is appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.
- (II) A copy of this order be communicated to the learned Sole Arbitrator by the Registry of this Court within a period of ten days from today.
- (III) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the Act of 1996 to the parties within a period of two weeks from the date of receipt of this order.
- (IV) The parties shall appear before the learned Sole Arbitrator on a date and place to be fixed by the learned Sole Arbitrator.
- (V) All the arbitral costs and fee of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to final award that may be passed by the learned Arbitrator in relation to the costs.
- (VI) The learned Arbitrator shall, before proceeding to decide the merits of the claims, decide the issue with regard to limitation after hearing the parties.

(Sanjay Dhar)
Judge

SRINAGAR

24.04.2026

“Bhat Altaf-Szegy”

Whether the **Judgement** is speaking: **YES**

Whether the **Judgement** is reportable: **YES**