

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 15 of 2025

Modi Projects Ltd., through its authorised representative Pradip Modi, son of Late Sita Ram Modi, Resident of 9/1, Basant Vihar Kanke Road, P.O. & P.S. Gonda, District- Ranchi, a company registered under The Companies Act, 1956 having its registered office at 2nd Floor, Shivani Apartment, 23-Lansdown Terrace, Kolkata-700026 and carrying out diverse nature of construction business, through its corporate office located at 248 Kanke Road, Ranchi, Jharkhand – 834008.

... Petitioner/Applicant

Versus

1. State of Jharkhand and others represented through Executive Engineer Water Ways Division No. 1, Water Resources Department, P.O. & P.S. - Chakardharpur, Seraikela Kharsawan, Jharkhand - 833102
2. The Engineer-in-Chief, Water Resources Department, State of Jharkhand, Nepal House, P.O. & P.S. - Doranda, Ranchi-834002
3. The Chief Engineer, Water Resources Department, State of Jharkhand, Jal Bhawan, P.O. & P.S. - Doranda, Ranchi-834002.

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Applicant:	Mr Shresth Gautam, Advocate Mr Gaurav Kumar, Advocate
For the Respondents:	Mr Sachin Kumar, A.A.G.-II Mr Ravi Kumar Mishra, A.C. to A.A.G.-II

Reserved on: 10.04.2026

Pronounced on: 17/04/2026

1. Heard the learned counsel for the parties.
2. This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act) seeking the appointment of a fresh Arbitrator to resolve disputes arising out of the contract for the construction of the Jharjharia Reservoir Project in the West Singhbhum District of the State of Jharkhand.

3. The gravamen of the controversy lies in the fact that this is a second round of arbitration, as, an earlier award dated 08.02.2017 was set aside by this Court on 08.01.2024, a decision which reached finality upon the dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 25.10.2024.

4. The existence of the arbitration agreement is not in dispute. Therefore, considering the limited scope of the proceedings under Section 11 the Act, the learned A.A.G.-II appearing for the Respondents, was requested to address on the objections, if any, to the appointment of an arbitral tribunal and to refer the parties to arbitration.

5. Mr Sachin Kumar, learned A.A.G.-II appearing for the Respondents, has raised a strenuous preliminary objection regarding the maintainability of the present application. It is his primary contention that these proceedings constitute an impermissible second round of arbitration, as the power of appointment under Section 11(6) stands exhausted once a final award has been passed and subsequently set aside without a specific remand under Section 34(4) of the Act. He further submits that the dispute concerns a pre-amendment regime of the Act, and therefore, the 2015 Amendment cannot be applied to these proceedings.

6. Mr Sachin Kumar cautions that allowing such a fresh appointment would lead to an endless cycle of litigation, contrary to the principle of finality, and places reliance upon the dicta of the Hon'ble Supreme Court in **Project Director, NHAI v. M. Hakeem**, (2021) 9

SCC 1 and **Union of India v. Parmar Construction Company, (2019) 15 SCC 682.**

7. Per Contra, Mr Gautam, learned counsel for the Applicant, submits that the objections raised by the State are no longer *res integra*. He contends that the setting aside of an arbitral award does not extinguish the underlying arbitration agreement and, relying on **McDermott International Inc. v. Burn Standard Co. Ltd.**, reported in (2006) 11 SCC 181, argues that while the mandate of a specific tribunal ends, the agreement survives. It is further urged that Section 43(4) of the Act expressly contemplates the commencement of fresh proceedings by providing for the exclusion of time spent in the earlier round for the purpose of limitation. He relied on the recent Five-Judge Constitution Bench decision of the Hon'ble Supreme Court in the case of **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, reported in (2025) 7 SCC 1, asserting that the law now clearly recognises the permissibility of fresh arbitral proceedings following the judicial annulment of an award.

8. Having considered the rival submissions and the authorities cited at the Bar, this Court is of the opinion that the present controversy must be viewed through the narrow prism of the limited jurisdiction available to this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

9. The Hon'ble Supreme Court has, in a series of pronouncements, including **SBI General Insurance Co. Ltd. v. Krish Spinning,**

reported in (2024) 12 SCC 1 and **Rajiv Gaddh v. Subodh Prakash**, reported in 2026 SCC Online SC 507, clarified that the referral Court is only required to examine the *prima facie* existence of the arbitration agreement.

10. This position finds further fortification in the case of **Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re**, reported in (2024) 6 SCC 1, wherein, the Hon’ble Apex Court specifically observed that the Court under Section 11(6) shall examine the existence of a *prima facie* arbitration agreement and “*not other issues.*” The Hon’ble Court elucidated that these “*other issues*” not only pertain to the validity of the arbitration agreement but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.

11. Furthermore, the Hon’ble Apex Court in the case of **Indian Oil Corporation Limited v. SPS Engineering Limited**, (2011) 3 SCC 507, has categorically observed in paragraph 16 of its judgment that the question of whether a claim is barred by *res judicata* does not arise for consideration in a proceeding under Section 11 of the Act. The Hon’ble Court further clarified that the limited scope of Section 11 does not *permit an examination of the maintainability or tenability of a claim, whether on facts or in law.*

12. In this case, the respondents have raised substantial questions regarding *res judicata*, the exhaustion of the power of appointment, and the applicability of the 2015 Amendment. These are essentially

jurisdictional challenges which, under the principle of *Kompetenz-Kompetenz* enshrined in Section 16 of the Act, fall within the domain of the Arbitral Tribunal.

13. At this stage, since the existence of the arbitration agreement in the original contract is not in dispute, this Court finds it appropriate to refer the parties to arbitration. All such contentions, including the maintainability of a second round of arbitration, the plea of limitation, and the effect of the earlier proceedings, are left strictly open for the learned Arbitrator to decide under Section 16 of the Act.

14. It is further clarified that any observations made or opinions expressed by this Court in the present order shall have no bearing on the merits of the disputes to be adjudicated by the learned Arbitral Tribunal. In this regard, reliance is again placed on the judgment of the Hon'ble Supreme Court in **Interplay Between Arbitration Agreements (supra)**. The Hon'ble Court has clarified that a *prima facie* opinion by a Referral Court does not bind the Arbitral Tribunal, which retains full jurisdictional competence to examine the existence and validity of the agreement in depth. Consequently, all contentions remain open for the Tribunal's independent determination.

15. Accordingly, this application is disposed of by making the following orders: -

(A) *Hon'ble Mr. Justice Narendra Nath Tiwari*, a Former Judge of this Court, presently residing at 673 F/Jatin Chandra Road (J.C. Road), Burdwan Compound, Lalpur, Ranchi - 834001 (email

address:- justicennt@gmail.com) is hereby 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.

(B) A copy of this order should be communicated to the learned Sole Arbitrator by the advocates for the Applicants within ten days from today. The applicants shall provide the parties' contact and communication particulars to the Id. Arbitral Tribunal, along with a copy of this order.

(C) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the said Act to the parties within a period of two weeks from the receipt of a copy of this order.

(D) The parties shall appear before the learned Sole Arbitrator on such date and at such place (Ranchi, Jharkhand) to obtain appropriate directions regarding the conduct of the arbitration, including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings, etc.

(E) At the above-referred meeting, the parties shall provide the Arbitral Tribunal with a valid and functional email address and the mobile numbers of the respective advocates of the parties. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

(F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance and shall be subject to any final Award that may be passed by the Tribunal in relation to the costs.

16. It is clarified again that nothing in this order is an expression or an opinion on the merits of this matter. The Arbitral Tribunal now appointed shall issue directions to the parties on how to proceed further in the matter.

17. This Arbitration Application is disposed of in the above terms without any order for costs. Pending I.A.s, if any, stand disposed of. All concerned can act on an authenticated copy of this order.

(M. S. Sonak, C.J.)

April 17, 2026

N.A.F.R.

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