

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No.98/2024

Aksh Optifibre (Limited), Through Its Authorized Signatory Mr. Lokesh Khandelwal, Having Its Registered Office At F-1080, Riico Industrial Area, Phase III, Bhiwadi, Rajasthan, And Branch/service Division Office At The Diamond, Fourth Floor, Urbana Jewels, Opposite Muhana Terminal Market, Sanganer, Jaipur

-----Applicant

Versus

1. Department of Information Technology and Communication, (DOIT and C), Government Of Rajasthan, through its Secretary, Having Its Office At Yojana Bhawan, Tilak Marg, Jaipur-302001, Rajasthan
2. Rajcomp Info Services Limited, (RISL) Through Its Managing Director, Having Its Office At Yojana Bhawan, 1St Floor, C-Block, Tilak Marg, Jaipur- 302001, Rajasthan
3. Jodhpur Vidyut Vitran Nigam Limited, (JDVVNL), Through Its Managing Director, Having Its Registered Office At New Power House, Industrial Area, Jodhpur- 342 003, Rajasthan

-----Respondents

For Applicant	:	Mr.Divay Prakash Modi, Adv.
For Respondents	:	Ms.Namita Parihar, Deputy Government Counsel for R-1
		Mr.Yogendra Singh Rajawat, Adv. for R-2
		Mr.Jai Lodha, Adv. for R-3

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
ORDER

Date of conclusion of arguments	:	<u>08/05/2026</u>
Date on which order was reserved	:	<u>08/05/2026</u>
Whether the full order or only the operative part is pronounced	:	<u>Full Order</u>
Date of pronouncement	:	<u>21st/05/2026</u>

1. The present arbitration application has been moved on behalf of the applicant-Company praying for appointment of an Arbitrator.

2. It is stated that the applicant, being a private limited company was engaged in the business of delivering of E-Governance Services within the State of Rajasthan. While respondent No.2 is a Government of Rajasthan undertaking having expertise in the field of IT Consultancy in E-Governance Project conceptualization & implementation and other areas relating to IT. It is an implementing agency of the State Government (the respondent No.1) for E-mitra projects.

3. Respondent No.3 is engaged in the distribution of electricity in the territory of Jodhpur Vidyut Vitran Nigam Limited as defined.

4. The company entered upon an Expression of Interest (EOI) issued by respondent No.2 inviting Local Service Providers to deliver E-Governance Services through establishing E-mitra kiosk.

5. Another tripartite agreement was entered into between the applicant, respondent No.1 and respondent No.3 with respect to the collection of dues and other services through CSC/ E-mitra kiosk network on 01.04.2013.

6. In 2017, allegations were levelled about the possibility of embezzlement of the amount received from payment of electricity bills by the kiosk operator of the applicant which was operated by one Deepak Verma in Chattargarh (Bikaner) region and one Kanhaiya Lal in Padru (Barmer) region and independent FIRs were registered against both the persons. Ultimately, a demand notice was issued by the respondent against the applicant on 24.09.2019 and the applicant invoked arbitration

clause and an arbitrator was appointed who dismissed the arbitration petition of the applicant on 04.07.2022 holding that the same was not maintainable. Against the order of 04.07.2022, objections were raised by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act of 1996') which were rejected on 04.10.2023 on the issue of maintainability.

7. During the pendency of the proceedings under Section 34 of the Act of 1996, the applicant also filed an application under Section 9 of the Act of 1996 to restrain respondent No.2 from deducting any commission from the balance of applicant. However, it is stated that the amount of Rs.57,11,776/- was deducted and transferred to the bank account of respondent No.3 in lieu of the demand notice dated 11.07.2022. Although, the learned Commercial Court restrained the respondent from making any deductions.

8. The applicant has raised a dispute with regard to deduction of aforesaid amount of Rs.57,11,776/- on the ground that unless the embezzlement is proved and amount of embezzlement is correctly computed and verified from the documentary evidence, the amount could not have been deducted. Therefore, a notice under Section 21 of the Act of 1996 was served on the respondents by the applicant on 10.06.2024.

9. Learned counsel for the claimant has pointed out Clause 10 of the Tripartite Agreement dated 01.04.2013 and Clause 19.4 of the subsequent Agreement dated 09.07.2014, submitting that both the agreements were interrelated. The applicant-claimant

has submitted that there being a common dispute, the same may be referred to a single arbitration proceeding.

10. It has been pointed out that in the reply to the notice, the respondents have refused to refer the dispute to arbitration and have prayed that the applicant's claim relating to the amount alleged to have been embezzled deserves to be returned.

11. It has been submitted that though in the agreement the provision relating to adjudication of dispute through the Arbitrator talks about appointment of a unilateral Arbitrator, however, keeping in view the law as laid down in the case of **Perkins Eastman Architects DPC and Another vs HSCC (India) Limited¹**, it is submitted that the said provision will have no application now and an appointment of independent Arbitrator is required to be made by this Court.

12. Per contra, learned counsel appearing for the respondent has submitted that the arbitration application is barred by limitation as the first demand was raised on 12.05.2018 and the last demand was raised on 24.09.2019 and hence, the application which has been filed on 23.08.2024 is beyond the time limitation.

13. Learned counsel appearing for the respondent has further objected and submitted that the arbitration clause, i.e., Clause 10, was invoked and an arbitrator was already appointed. The application was dismissed by the learned Arbitrator and the application under Section 34 of the Act of 1996 also stood dismissed on 04.10.2023 and no appeal under Section 37 of the

¹ (2020) 20 SCC 760

Act of 1996 is pending before the High Court. Thus, the order passed on the dispute has attained finality and the present application would not be maintainable in terms of the doctrine of *res judicata*.

14. Learned counsel appearing for respondent No.2, Mr. Yogendra Singh Rajawat, has raised further objections with regard to the application not being maintainable on the ground that there is no resolution of the Board on record with regard to the present application for appointment of an Arbitrator.

15. Learned counsel relies on the judgment passed by the Apex Court in the case of **State Bank of Travancore vs Kingston Computers India Private Limited**². The learned counsel further submits that the application is highly belated and submits that in view of judgment passed by the Apex Court in the case of **Arif Azim Company Limited vs Aptech Limited**³ the Limitation Act, 1963 would be applicable for appointment of Arbitrator under Section 11(6) of the Act of 1996.

16. I have considered the submissions made by the learned counsels for the parties and perused the material available on record.

17. This Court finds that in the case of **Lifeforce Cryobank Sciences Inc vs Cryoviva Biotech Pvt Ltd. and Others**⁴ the Apex Court held that the scope of the Court at the stage of Section 11(6) is to examine the existence of arbitration agreement and the issues of assignment, novation and arbitrability are to be looked into by the Arbitral Tribunal. It

2 (2011) 11 SCC 524

3 (2024) 5 SSC 313

4 2024 SCC Online SC 3215

would be apposite to quote paragraph 11 of the judgment as under:-

"**11.** Be that as it may, since at the stage of consideration of a prayer under Section 11(6) of the 1996 Act the Court has to confine itself to the examination of the existence of an arbitration agreement (vide sub-section (6-A) of Section 11), it would not be appropriate for us to delve deep into the issue as it could well be considered by the arbitrator on the basis of evidence led by the parties. More so, when existence of arbitration agreement in the license agreement and share subscription agreement is not in dispute."

18. In the case of **Adavya Projects Private Limited vs Vishal Structurals Private Limited And Others**⁵ the Apex Court held as under:-

"**29.** It is also relevant to note that while deciding such an application under Section 11(6), the High Court or this Court, as the case may be, undertakes a limited examination as per Section 11(6-A). The Court's jurisdiction is confined to a *prima facie examination*, without conducting a mini-trial or laborious and contested inquiry, into the *existence* of the arbitration agreement i.e. whether there exists a contract to refer disputes that have arisen between the parties to arbitration. Further, any examination into the validity of the arbitration agreement must be restricted to the requirement of "formal validity" i.e. whether the requirements of a written agreement under Section 7 of the ACA are satisfied. Beyond this, the Court must leave it to the Arbitral Tribunal to "*rule*" on and adjudicate the existence and validity of the arbitration agreement on the basis of evidence adduced by the parties, in accordance with the principle under Section 16 of the ACA."

19. In the case of **Aarif Azim Company Limited** (supra), while considering the law laid down by a Seven-Judge Bench of the

Apex Court in the case of **SBP & Co. vs Patel Engineering Ltd**

And Another⁶ the Apex Court held as under:-

"**49.** A seven-Judge Bench of this Court in *SBP & Co. v. Patel Engg. Ltd.* held that the issue of limitation being one of threshold importance, it must be decided at the pre-reference stage, so that the other party is not dragged through a long-drawn arbitration, which would be expensive and time-consuming.

.....
53. It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an Arbitral Tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.

.....
57. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of the Hohfeld's analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 will commence only after the right to apply has accrued in favour of the applicant. As per Hohfeld's scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another. When an application under Section 11(6) of the 1996 Act is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the 1996 Act, is exhausted

by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator and refer the matter to an Arbitral Tribunal. Thus, the "*right to apply*" of the applicant can be said to have as its jural correlative the "*duty to appoint*" of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, the limitation period for filing a petition under Section 11(6) of the 1996 Act 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."

20. Furthermore, a Three-Judge Bench of the Apex Court in the case of **Geo Miller and Company Private Limited vs Chairman, Rajasthan Vidyut Utpadan Nigam Limited**⁷ considered earlier judgments and held that the limitation period for reference of a dispute to arbitration or for seeking appointment of an Arbitrator before a Court is three years from the date on which the cause of action or the claim which is sought to be arbitrated first arises.

21. Thus, keeping in view the law as laid down and noticed above, this Court finds that the objection raised by the respondent with regard to principle of *res judicata* is concerned, objection raised by the respondent of non-maintainability of the application under Section 11 (6) of the Act of 1996 on the basis of principle of *res judicata* is found to be without basis.

22. This Court notices that earlier, a unilateral Arbitrator of the Department, who was the officer of the Department itself, had

7 (2020) 14 SCC 643

dismissed the application seeking arbitration holding that the arbitration is not maintainable. It was not decided on merits. Moreover, keeping in view the law as laid down in the case of **Perkins Eastman Architects DPC** (supra) such decision would not be binding or treated as a *res judicata* for appointment of an independent Arbitrator to examine the case of the dispute on merits. The objection is accordingly rejected.

23. As regards, the objection on the ground of limitation is concerned, this Court finds that the notice for appointment of arbitrator was given by the respondent regarding the claim of wrongful deduction of amount for the first time on 10.06.2024, the respondent has refused the demand vide their letter dated 27.06.2024. Thus, the cause of action arises from the date of refusal, i.e., 27.06.2024, and therefore, the present application would come within the limitation. The objection is therefore rejected.

24. Accordingly, taking note that a dispute exists between the parties and that there is an arbitration clause existing in both the agreements as noted above, this Court allows this arbitration application and thus, appoints Hon'ble Mr. Justice Manoj Kumar Garg (Former Judge, Rajasthan High Court) R/o "Garg Bhawan", Paota 'B' Road, Jodhpur to act as the Sole Arbitrator and to decide all issues without prejudice to the rights and contentions raised in the present application and in the reply. The arbitration fees shall be determined in accordance with the Fourth Schedule of the Act of 1996, as amended. The fee of the Arbitrator will be

equally borne by both the parties. The place of arbitration shall be at Jodhpur.

25. The arbitration application is allowed accordingly.

26. Copy of this order shall be sent to the appointed Sole Arbitrator.

(SANJEEV PRAKASH SHARMA), ACTING CJ

Himanshu Soni/Gaurav/reserve