

Considerations that weigh with court while appointing arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996

he Hon'ble Supreme Court of India in its recent judgment¹ set aside a judgment of the High Court of Madhya Pradesh rejecting an application for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act") on the ground that claims of the petitioner-contractor were barred by limitation. The Hon'ble Supreme Court held that after the 2015 amendments to the Act, court is only required to examine the existence of arbitration agreement. All other preliminary or threshold issues are to be decided by the arbitral tribunal under Section 16 of the Act.

In yet another decision², reversing the judgement of Delhi High Court, the Supreme Court held that once parties consciously and with full understanding executed an amendment of agreement ("AOA"), whereby the contractor gave up all his claims and consented to the new arrangement specified in AOA including that there will be no arbitration for the settlement of any claims by the contractor in future, it is not open for the contractor to take recourse to arbitration process or to resurrect the claim which has been resolved in terms of the amended agreement. Accordingly, the Arbitration Petition for appointment of arbitrator was dismissed.



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¹ Uttarakhand Purv Sainik Kalyan Nigam Limited Versus Northern Coal Field Limited reported in 2019 (6) Arb. LR 237 (SC)
² WAPCOS Ltd. vs Salma Dam Joint Venture & Another; 2019 (6) Arb. LR 247 (SC)

Again in another matter³ relating to appointment of arbitrator arising out of a judgement of Delhi High Court, the Supreme Court refused to accept the plea that by singing a “no claim” certificate the contractor is barred from demanding arbitration. Leaving the merits of the contention for the arbitral tribunal to decide, the Supreme Court directed for appointment of arbitrator as per the parameters provided in the contract and set aside appointment of independent arbitrator by the High Court.

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³ UOI Vs. BM Construction Company; 2019 (6) Arb. LR 284 (SC)