

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 15.06.2026
DELIVERED ON: 23.06.2026**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

AP-COM 247 OF 2026

**RAJPATH CONTRACTORS AND ENGINEERS LTD
VERSUS
UNION OF INDIA AND ANR**

Appearance:

**Mr. Priyankar Saha, Adv.
Ms. Srijani Mukherjee, Adv.**

..... for the petitioner

**Mr. Dhiraj Kr. Trivedi, Ld. DSGI, Adv.
Mr. Shailendra Kr. Mishra, Adv.
Ms. Divyanshi Shaw, Adv.**

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The present Arbitration Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking constitution of an Arbitral Tribunal comprising a Sole Arbitrator to adjudicate the disputes that have arisen between the parties.
- 2.** The relevant facts are set out hereinbelow.
- 3.** The Petitioner had participated in a tender floated by the Respondent for the work of "Construction of New Bridge No. 172 over river Brahmani (2×9×30.5 m PSC Box Girder) with pile foundation located at Km 110.704 from Howrah on UP & DN lines in between Swadinpur and Naihati Station in Rampurhat-Barharwah Section of Eastern Railway" and was declared the successful bidder. Pursuant thereto, an Agreement dated 05.01.2009

was executed between the parties. Disputes arose during execution of the work, which stood completed on 31.05.2015. The final escalation bill, along with the security deposit, was released on 22.10.2020. Thereafter, by letter dated 03.05.2023, the Petitioner raised claims amounting to Rs. 38,07,04,780/- and sought appointment of an Arbitral Tribunal. By letter dated 31.05.2023, the Respondent called upon the Petitioner to waive the applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996. The Petitioner, however, declined to grant such waiver by letter dated 07.06.2023.

4. In these circumstances, the Petitioner approached this Court by filing AP No. 637/2023. By order dated 06.10.2023, this Court constituted an Arbitral Tribunal comprising three members. The learned Arbitral Tribunal, by order dated 13.05.2024, terminated the arbitral proceedings in exercise of its powers under Section 16 of the Act, holding that the disputes raised by the Petitioner fell within the category of "excepted matters" under Clause 43(2) read with Clause 63 of the General Conditions of Contract (GCC). Aggrieved thereby, the Petitioner preferred an appeal under Section 37(2)(a) of the Act, being AO (Com)/14/2024. By judgment and order dated 19.08.2024, this Court set aside the order of the Arbitral Tribunal, holding that the disputes are arbitrable. The operative portion of the said order reads as follows:

"In the above facts and circumstances, the mere execution of a No Claim Certificate by the Petitioner was not per se determinative of whether the disputes raised were an excepted matter or not. With the greatest respect, the suo moto exercise taken by the Arbitral Tribunal to summarily decide whether the disputes involved fell within the category of excepted matters required a judicial determination and after consideration of the evidence. In such circumstances, the impugned order is ex-facie perverse and is set aside.

There shall be an order in terms of prayers (a) and (b) of the Notice of Motion. With the above directions, AO (Com)/14/2024 stands allowed."

5. In view of the setting aside of the order passed under Section 16 of the Act, the disputes between the parties survive for adjudication. The Petitioner has, accordingly, filed the present petition seeking constitution of a fresh Arbitral Tribunal.

Submission on behalf of the Petitioner

6. Mr. Priyankar Saha, learned counsel for the Petitioner submits that disputes arose between the parties during the execution of the work, pursuant to which the Petitioner by its letter dated 03.05.2023, raised claims amounting to Rs. 38,07,04,780/- (by letter dated 03.05.2023) and sought the appointment of an Arbitral Tribunal. Upon the Respondent declining to waive the applicability of Section 12(5) of the Act, the Petitioner approached this Court by filing AP No. 637/2023, pursuant to which an Arbitral Tribunal comprising three members was constituted by an order dated 06.10.2023. It is submitted that the learned Arbitral Tribunal, by order dated 13.05.2024, terminated the proceedings under Section 16 of the Act, holding that the claims raised by the Petitioner fell within the category of "excepted matters" under Clause 43(2) read with Clause 63 of the GCC, principally on the ground that the Petitioner had issued a No Claim Certificate in favour of the Respondent. Aggrieved thereby, the Petitioner preferred an appeal under Section 37(2)(a) of the Act, being AO (Com)/14/2024, which came to be allowed by this Court vide judgment and order dated 19.08.2024, whereby the order passed by the learned Arbitral Tribunal was set aside and it was held that the disputes raised are arbitrable.

7. It is submitted that the issuance/execution of a No Claim Certificate by the Petitioner does not operate as a bar to the invocation of arbitration, nor does it extinguish the disputes raised by the Petitioner. The law on this point is well settled.
8. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Union of India v. Parmar Construction Company***, reported as ***(2019) 15 SCC 682***, wherein it has been held that a No Claim Certificate, even if furnished by the contractor, does not by itself preclude the contractor from raising claims and invoking arbitration, particularly where it is the case of the contractor that such certificate was obtained under economic duress, coercion, or as a matter of compulsion to secure release of the final dues/security deposit. Whether the No Claim Certificate was executed voluntarily or was extracted under duress/coercion is a matter requiring adjudication on merits by the Arbitral Tribunal, and cannot constitute a ground for this Court, at the stage of a Section 11 petition, either to decline reference of the disputes to arbitration or to hold that the claims as not arbitrable.
9. It is further submitted that the very question as to whether the disputes raised by the Petitioner are arbitrable, notwithstanding the execution of the No Claim Certificate, already stands conclusively determined in favour of the Petitioner by this Court in AO (Com)/14/2024, vide judgment and order dated 19.08.2024. This Court, while setting aside the order of the Arbitral Tribunal passed under Section 16 of the Act, specifically held that the mere execution of a No Claim Certificate by the Petitioner was not per se determinative of whether the disputes raised were an excepted matter, and that the said issue required a judicial determination upon

consideration of the evidence. The said finding has attained finality, has not been challenged any further, and squarely covers the issue between the same parties.

10. In these circumstances, it is submitted that it is no longer open to the Respondent to reargue the objection relating to the No Claim Certificate at the present stage, whether for opposing the constitution of the Arbitral Tribunal or otherwise, the same being barred by the principles of res judicata / constructive res judicata, as also the settled principle that an issue once decided between the same parties, having attained finality, cannot be reopened in a subsequent proceeding arising out of the same cause of action. The scope of the present petition under Section 11 is accordingly confined to constitution of the Arbitral Tribunal, and any objection on the question of arbitrability or the effect of No Claim Certificate, having already been answered, is no longer available to the Respondent to raise afresh, either before this Court or before the Arbitral Tribunal.

11. In view of the above, it is submitted that this Court may proceed to constitute an Arbitral Tribunal comprising a Sole Arbitrator to adjudicate the disputes between the parties, leaving it open to the Arbitral Tribunal, if at all necessary, only to examine the merits of the claims, and not the threshold question of arbitrability or whether the disputes constitute excepted matters, which already stands concluded.

Submission on behalf of the Respondent

12. Mr. Dhiraj Trivedi, learned DSGI. for the Respondent states that the present petition is not maintainable. Relying upon the letter dated 03.02.2020, it is submitted that the No Claim Certificate was issued by the Petitioner only

after receipt of the final payment, and not at any anterior stage when the Petitioner could be said to have been under any economic compulsion or constraint *vis-à-vis* the Respondent. It is submitted that since the No Claim Certificate was issued subsequent to, and not as a precondition for, the release of payment, there was no occasion for any unequal bargaining position or lack of level-playing field between the parties at the time of its issuance. In these circumstances, it is submitted that the Petitioner cannot now be permitted to contend that the No Claim Certificate was issued under coercion, duress, or economic compulsion, such a plea being factually unsustainable on the Petitioner's own admitted timeline of events.

13. It is submitted that the present disputes, having been raised only after the issuance of an unqualified No Claim Certificate by the Petitioner, are not arbitrable and are squarely governed by Clauses 43(2), 63, and 64(i) of the General Conditions of Contract (GCC), which expressly bar the contractor from raising any claim after issuance of a No Claim Certificate. It is submitted that the said clauses constitute "excepted matters" within the meaning of the contract between the parties, and the claims raised by the Petitioner, being barred by the Petitioner's own discharge of the contract through the No Claim Certificate, fall outside the scope of arbitration.

14. It is further submitted that this Court, in its judgment and order dated 19.08.2024 passed in AO (Com)/14/2024, did not, at any point, debar or preclude the Respondent from raising the plea of the No Claim Certificate before this Court at the stage of a petition under Section 11 of the Act. It is submitted that the said judgment was confined to setting aside the order of the Arbitral Tribunal passed under Section 16 of the Act on the ground

that the Tribunal could not have summarily decided the question of "excepted matters" without a judicial determination upon consideration of the evidence. It is submitted that the said judgment did not adjudicate, finally or otherwise, the merits of the No Claim Certificate nor did it conclusively hold that the disputes are, in fact, arbitrable. In these circumstances, it is submitted that the plea now sought to be raised by the Respondent is not barred by the principles of res judicata or constructive res judicata, inasmuch as the issue relating to the binding effect and validity of the No Claim Certificate has neither been raised nor decided between the parties on merits in the earlier round of litigation, and the Respondent is, therefore, entitled to raise the said plea at this stage.

- 15.** It is further submitted that the judgment relied upon by the Petitioner, namely ***Parmar Construction Company*** (*supra*) is clearly distinguishable on facts and is of no assistance to the case of the Petitioner as the No Claim Certificate was issued in the said case prior to the release of the final payment.
- 16.** In view of the foregoing, it is submitted that the present petition is liable to be dismissed, as the disputes sought to be raised by the Petitioner are not arbitrable and are barred by the unqualified No Claim Certificate issued by the Petitioner after receipt of final payment, in terms of Clauses 43(2), 63, and 64(i) of the GCC.

Legal Analysis

- 17.** This Court has heard the arguments advanced by both the parties and examined the documents placed on record and perused the judgments cited at the Bar.

- 18.** The issue involved in the present matter is whether, in light of the No Claim Certificate issued by the Petitioner, the disputes raised by the Petitioner are arbitrable, and whether the Respondent is precluded from raising the plea relating to the No Claim Certificate at this stage in view of the earlier judgment and order dated 19.08.2024 passed in AO (Com)/14/2024.
- 19.** It is well settled that the existence of a No Claim Certificate, by itself, does not oust the jurisdiction of the Arbitral Tribunal or render the disputes non-arbitrable. The Hon'ble Supreme Court in ***Parmar Construction (supra)***, has held that where the contractor's case is that the discharge voucher/No Claim Certificate was obtained under economic duress, coercion, or compulsion for securing release of the dues, the question as to whether such certificate was executed voluntarily or was extracted under compulsion is itself a triable and arbitrable issue requiring adjudication upon evidence by the Arbitral Tribunal, and cannot be summarily decided at the threshold so as to deny reference to arbitration. The scope of enquiry at the stage of a petition under Section 11 of the Act, is confined to the existence of an arbitration agreement, and the Court is neither required nor is it ordinarily appropriate, to enter into a detailed adjudication on the merits of a contractual bar such as a No Claim Certificate, which is more appropriately a matter for determination by the Arbitral Tribunal.
- 20.** Insofar as the objection based on the principles of *res judicata* raised by the Petitioner is concerned, this Court is of the view that the judgment and order dated 19.08.2024 passed in AO (Com)/14/2024 set aside the order of the learned Arbitral Tribunal passed under Section 16 of the Act on the

limited ground that the Tribunal could not have summarily terminated the proceedings by treating the disputes as "excepted matters" without a judicial determination upon consideration of the evidence. The said judgment, while holding that the question required adjudication on evidence, did not itself conclusively determine, on merits the validity or binding effect of the No Claim Certificate. Even if the plea is not strictly barred by the principles of *res judicata*, the law laid down in ***Parmar Construction*** (*supra*) makes it clear that such questions, namely, whether the No Claim Certificate was executed voluntarily, and whether it operates as a bar to the claims raised, are matters going to the merits of the dispute and are appropriately left for determination by the Arbitral Tribunal, rather than being resolved by this Court at the stage of reference under Section 11 of the Act.

- 21.** It is well settled that, at the stage of a petition under Section 11 of the Act, the only consideration before this Court is whether a valid arbitration agreement exists between the parties. In the present case, there is no dispute with regard to the existence of a valid arbitration agreement between the parties. The only objection raised by the Respondent is whether, in view of the issuance of the No Claim Certificate by the Petitioner, the disputes can at all be referred to arbitration. In view of the law laid down by the Hon'ble Supreme Court in ***Parmar Construction*** (*supra*), this issue is no longer *res integra*, and it stands settled that the question as to whether a No Claim Certificate bars the claims of the contractor is a matter to be examined by the Arbitral Tribunal on merits, and not a ground available to this Court, at the stage of a petition under Section 11 of the Act, to decline reference of the disputes to arbitration.

22. This Court is further fortified in the above view by the law laid down by the Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning**, reported as **2024 SCC OnLine SC 1754**, wherein it has been authoritatively held that the scope of examination by a referral Court under Section 11 of the Act is confined only to the existence of a valid arbitration agreement between the parties, and the referral Court is neither required nor entitled to enter into any other issue, including issues touching upon the merits or maintainability of the claims, limitation, or any other preliminary objection, all of which fall squarely within the domain of the Arbitral Tribunal. The Hon'ble Supreme Court has held that any such additional scrutiny at the referral stage would run contrary to the legislative intent underlying the 2015 amendment to Section 11 of the Act, which was introduced precisely to minimise judicial intervention and to ensure that the Arbitral Tribunal, and not the Court, is the first forum to examine all contested issues, factual or legal, between the parties. Applying the said principle to the facts of the present case, this Court finds that the question as to whether the No Claim Certificate issued by the Petitioner bars the claims raised by it is a matter falling within the exclusive domain of the Arbitral Tribunal, and does not constitute a ground available to this Court to decline reference to arbitration at the stage of the petition under Section 11.

23. Having regard to the above, this Court is of the view that the disputes raised by the Petitioner are arbitrable, and the question relating to the effect and validity of the No Claim Certificate, including the rival contentions urged by learned counsel for the parties on facts and law, is left open to be agitated before and adjudicated by the Arbitral Tribunal.

- 24.** In view of the aforesaid, this Court finds sufficient grounds to allow the present petition. Accordingly, an Arbitral Tribunal comprising: (i) Justice Pinaki Chandra Ghose (Retd.), (Presiding Arbitrator), (ii) Ms. Ritzu Ghosal, Senior Advocate; and (iii) Mr. Saptangshu Basu, Senior Advocate, is constituted to adjudicate the disputes which have arisen between the parties out of and in connection with the Agreement dated 05.01.2009, including the question relating to the effect and validity of the No Claim Certificate, which is left open for determination by the Arbitral Tribunal on its merits.
- 25.** The learned Arbitral Tribunal shall enter upon the reference upon furnishing disclosure in terms of Section 12 of the Arbitration and Conciliation Act, 1996. All contentions of the parties on merits, including those urged by learned counsel for the parties on facts and law in respect of the No Claim Certificate, are kept open to be decided by the learned Arbitral Tribunal in accordance with law.
- 26.** The fees of the learned Arbitral Tribunal shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996, unless otherwise agreed upon by the parties and the learned Arbitral Tribunal.
- 27.** The present petition is accordingly allowed in the above terms.

(GAURANG KANTH, J.)