

## **CASE BRIEF**

**Case Name: Offshore Infrastructures Limited v. M/s Bharat Petroleum Corporation Limited**

**Case Number: Civil Appeal @ SLP (C) Nos. 22105–22106 of 2024**

**Court: Hon'ble Supreme Court of India**

**Coram: Justice Dipankar Datta and Justice AG Masih**

**Date of Decision: 7th October, 2025**

## 1. Facts & Procedural History

1. Bharat Oman Refineries Limited (later merged into Bharat Petroleum Corporation Limited ('BPCL')) awarded Offshore Infrastructures Limited ('OIL') a composite contract for setting up a Modular Penex Unit and related revamp works at the Bina Refinery. The scope covered civil, mechanical, electrical and instrumentation activities with a defined completion period and a liquidated damages clause.
2. Execution went beyond the contractual window. BPCL processed the final bill, released payments, and deducted five percent as liquidated damages. OIL disputed the deductions and raised consolidated claims seeking release of withheld sums and amounts linked to delay and extra work.
3. The contract contained an arbitration clause under General Conditions of the Contract ('GCC') clause 8.6, wherein the Managing Director of the employer, or a nominee, would appoint the sole arbitrator. Invoking this clause, OIL sent a notice seeking appointment, objected to the Managing Director/employee pathway in view of the amended Arbitration and Conciliation Act, 1996, and proposed neutral names. BPCL declined the claims and did not agree to a neutral constitution.
4. OIL then filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') before the High Court seeking appointment of a sole arbitrator. The High Court dismissed the application as time-barred, computing limitation from OIL's "No Claim Certificate" and related settlement documents. A review petition was also dismissed on the same reasoning. OIL challenged both the orders before the Supreme Court.

## 2. Contentions

### 2.1 Appellant (OIL)

1. The application under Section 11(6) of the Act was filed within limitation. Reliance was placed on **Arif Azim Company Limited v. Aptech Limited**<sup>1</sup>, which holds that the period for filing an application for appointment of an arbitrator commences only upon

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<sup>1</sup> (2024) 5 SCC 313

issuance of a valid notice invoking arbitration, followed by refusal or failure of the other party to appoint the arbitrator in accordance with the agreed procedure.

2. Even if limitation is computed from an earlier point, a part payment made by the Respondent extended the period of limitation under Section 19 of the Limitation Act, 1963. The Appellant relied on **Re: Cognizance for Extension of Limitation**<sup>2</sup>, and states that the period excluded by the Supreme Court's COVID-19 extension order must be given effect while computing limitation.
3. Ultimately, reliance was placed on **Perkins Eastman Architects DPC and Another v. HSCC (India) Limited**<sup>3</sup>, wherein it was held that under an identical arbitration clause where the appointing authority had not appointed an arbitrator by the time an application under Section 11(6) of the Act was filed, the Supreme Court appointed an arbitrator. The appellant contended that in the present case arbitration agreement was drafted prior to the 2015 amendment to the Act, and the power to appoint the arbitrator was vested with the Managing Director of the Respondent company. In previous cases, concerning arbitration agreements with similar clauses, Courts have upheld such arbitration agreements and have appointed arbitrators despite disqualification of the named authority.

## 2.2 Respondent (BPCL)

1. The Respondent supported the High Court's decision on limitation. It submits that the cause of action accrued when the final bill was raised and became due and that the Appellant ought to have invoked arbitration and filed the application within three years thereafter. On that footing, the application under Section 11 was time-barred.
2. The Respondent further contended that Clause 8.6(a) of the GCC contains a categorical stipulation that only the Managing Director or his nominee can act as the sole arbitrator. It is submitted that, due to subsequent legislative changes to the 1996 Act through amendments, such a contractual provision has become otiose and inoperative, and the arbitration clause ought to be treated as having ceased to exist. On that basis, the

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<sup>2</sup> (2022) 3 SCC 117

<sup>3</sup> (2020) 20 SCC 760

Respondent submitted that the arbitration mechanism stands effaced, disentitling the Appellant from invoking arbitration.

### **3. Issues**

1. Whether, once the named appointing authority becomes ineligible under Section 12(5) read with the Seventh Schedule, the court can nevertheless appoint an arbitrator under Section 11 so as to give effect to the parties' agreement to arbitrate.
2. Whether, in a construction-contract setting culminating in a final bill and subsequent invocation of arbitration, the Section 11 application was within limitation when assessed on the correct accrual framework.

### **4. Judgment / Holding**

1. The Supreme Court allowed the appeals, set aside the refusal to appoint and directed a neutral, institutional appointment of a sole arbitrator so that the disputes proceed in accordance with law and applicable rules.
2. No order was made as to costs. The outcome preserves the agreement to arbitrate while discarding an appointment pathway that cannot survive the neutrality regime.

### **5. Reasoning of court**

1. The Court first referred Perkins Eastman Architects DPC and Anr v. HSCC (India) Limited<sup>4</sup>, which followed **TRF Limited v. Energo Engineering Projects Limited**<sup>5</sup>. The principle is that when a person becomes ineligible to act as arbitrator by virtue of Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996, that ineligibility also extends to the power to nominate an arbitrator. Any appointment made by such an ineligible authority is legally unsustainable. Therefore, even if the respondent made an appointment, the Court's jurisdiction under Section 11(6) is not ousted where that appointment is ex facie invalid or contrary to the agreed procedure, and the Court may appoint an independent sole arbitrator.

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<sup>4</sup> Supra 3

<sup>5</sup> (2017) 8 SCC 377

2. The Court subsequently cited **Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Limited**,<sup>6</sup> to emphasise that the object of inserting Section 12(5) (by the 2015 amendment) is to secure neutrality of arbitrators. The non obstante clause in Section 12(5) rendered any person falling within the disqualifications under the Seventh Schedule ineligible to act as arbitrator, notwithstanding anything to the contrary in the arbitration clause. If an arbitration clause conflicts with Section 12(5), the Court has the power under Section 11 to appoint an independent arbitrator. This approach is also consistent with the pre-amendment position under Section 11(8), where courts had overridden restrictive clauses to ensure impartial appointments.
3. Applying these directions to this case, the Court noted that Clause 8.6 of the GCC named the Managing Director of Bharat Oman Refineries Limited or an officer nominated by the Managing Director as the arbitrator. Due to the statutory amendments, the Managing Director and such officer became ineligible by operation of law. The Respondent argued that once the clause became non-operative, the entire arbitration mechanism ceased to exist, which was rejected by the court. The Court held that the core agreement to refer disputes to arbitration remains part of the contract. Only the appointment procedure has become inoperative because of the statute. The clause must be read purposively so that the parties can still pursue arbitration, the non-operation of the named-person pathway does not extinguish the agreement to arbitrate. Therefore, the Appellant was entitled to move a Section 11(6) application, and the Court is empowered to appoint an arbitrator.
4. On limitation, the Court relied on **Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited**<sup>7</sup>. That judgement (reaffirming case **Grasim Industries Ltd. v. State of Kerala**<sup>8</sup>) explains that section 137 of the Limitation Act applies to the applications under Section 11 of the Act and that the cause of action arises when the final bill becomes due.
5. The Court relied on **Re: Cognizance for Extension of Limitation**<sup>9</sup>, wherein it was held that the pandemic period stood excluded from computing limitation in all judicial

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<sup>6</sup> (2017) 4 SCC 665

<sup>7</sup> (2020) 14 SCC 643

<sup>8</sup> (2018) 14 SCC 265

<sup>9</sup> Supra 2

and quasi-judicial proceedings. Balance period of limitation that remained on the cut-off point revived and continued from the time proceedings resumed. Where limitation would otherwise have expired during the excluded spell, a minimum ninety-day window applied from resumption, and if the actual balance available was longer than ninety days, that longer period governed. The Court also clarified that this exclusion extended to timelines under the Arbitration and Conciliation Act, 1996. Applying these directions, the Court treated the time falling within the pandemic exclusion as not countable. On a normal count the Section 11 application would have crossed the three-year bar; after giving effect to the exclusion and the revived balance, the Section 11(6) application was within limitation.

## **6. Judgement**

1. The Apex Court allowed the appeals and set aside the High Court's order. It was held that the arbitration agreement remains valid, but the Managing Director/employee-nomination pathway is inoperative under the neutrality regime.
2. On limitation, the Court treated the Section 11 request as maintainable on an accrual-based approach, giving effect to recognised exclusion periods.
3. No order as to costs.
4. Consequently, the Court referred the matter to the Delhi International Arbitration Centre for appointment of an independent sole arbitrator, who shall proceed in accordance with law and applicable rules. The appeals were allowed. There was no order as to costs, and any pending applications stood disposed of.

## **7. PSL opinion**

The Court keeps arbitration in place and fixes only the part of the clause that clashes with the neutrality rule. Asking an independent institution to appoint the arbitrator is a clear, practical way to avoid any party's influence. On limitation, the Court looks at when arbitration was actually invoked and then refused, which fits how construction disputes usually unfold. Overall, the result is balanced and easy to apply in similar contracts.