

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**Arbitration Case No. 346 of 2025****Date of decision: 17.07.2026**

M/s Surjit Singh & Co.

...Petitioner

Versus

Superintending Engineer & Anr....Respondents

Coram

The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.*Whether approved for reporting?***For the Petitioner :** Mr. Sumit Raj Sharma, Senior Advocate
with Mr. Santosh Kumar, Advocate.**For the Respondents:** Mr. Navlesh Verma, Additional
Advocate General.

G. S. Sandhawalia, Chief Justice (Oral)

The present petition has been filed under sub Section 6 of Section 11 of the Arbitration and Conciliation Act, 1996 (for short '*the Act*') for appointment of an Arbitrator, in respect of the work "*widening and strengthening of Jawalamukhi, Dehra, Jawali Raja Ka Talab road Km. 12/0 to 29/0 under CRF Job No. HP-2017-18-117 (SH:- Removal of formation deficiency including of pavement of intermediate lane extension of cross drainage structure, P/L bituminous macadam and bituminous concrete, C/o parapets, drain and side furniture etc. Km. 12/0 to 29/0.*".

2. The aforementioned work was awarded vide letter of acceptance dated 28.03.2018 (Annexure P-1) for the estimate cost of Rs.9,95,24,837/- and the Agreement No. 38 was duly entered into between the parties and the parties were agreed to

refer all the disputes to the arbitrators appointed under Clause 25.3 of the General conditions of the contract.

3. Learned counsel for the petitioner submits that dispute as such having arisen initially, the respondents had approached to Dispute Review Expert as per the terms of the agreement and on account of not having received any response as such, necessary notice was issued on 31.03.2022 (Annexure P-5) for appointment of an independent and impartial arbitrator, as per the amended provisions of the Act, failing which the petitioner would be constrained to avail appropriate remedy by filing petition in the Punjab & Haryana High Court at Chandigarh.

4. It is submitted that no response was received, which led to the filing of the Arbitration **Application No. 247 of 2022**, titled as **M/s Surjit Singh and Company vs. Executive Engineer and another**, before the High Court of Punjab and Haryana, which was dismissed on 03.05.2023 with liberty to approach the Competent Court.

5. The petition has been opposed by filing reply as such, wherein it has been mentioned that stipulated period for completion of work was 18 months, which was ended upto 15.11.2019. Since the petitioner had failed to execute and complete the work in the terms of the conditions contained in the agreement, the Superintending Engineer had terminated the agreement on 30.03.2020 and limitation for filing the petition for appointment of arbitrator had started from 30.03.2020 and, thus,

limitation had expired in the year 2023 and the petition as such is time barred.

6. It is admitted that more than 95% of the work site was handed over to the petitioner for execution of the work and the stand of the respondents is that payment in respect of partial work executed by the petitioner was made in five running bills till 11.12.2019 and even a penalty of 10% of the contract amount had been imposed upon the petitioner only after giving ample opportunities of hearing. Various notices had been issued prior to that.

7. In such circumstances, the State as such has taken the stand that the petition is time barred and the plea that no notice had been issued in accordance with the provisions of Clause 25(3) of the Act and contested that notice was not a legal and valid notice.

8. It has also been mentioned that 10% of the total contract amount of Rs. 738.23 lakh as well as balance unexecuted work @ 20% were imposed as penalty as per the provisions and was recovered by the encashment of Bank Guarantee. The work had been executed only for Rs. 151.76 lakh against the awarded work of Rs. 738.23 lacs even after the lapse of 18 months.

9. It is, thus, apparent that various issues, have to be resolved as per the arrangement made between the parties by referring the matter to arbitration as agreed. The notice having

been served on 10.01.2022 but the Dispute Review Committee having not been acted upon, the same led to issuance of other notice dated 31.03.2022 invoking the arbitration clause, and, therefore, *prima facie* it cannot be said that the claim was time barred. It is settled principle that such issues should be best left to the wisdom of the arbitrator.

10. Accordingly, Hon'ble Mr. Justice Ajay Tewari (Retd.), H. No. 3038, Sector-21D, Chandigarh and R-8, Third Floor, Green Park Extension, New Delhi, Mobile No. 9780008141, is appointed as Arbitrator to adjudicate the dispute between the parties, after his disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, his appointment, as an Arbitrator, shall come into force.

11. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Hon'ble Mr. Justice Ajay Tewari (Retd.), shall enter into reference, and shall pass an award in accordance with law.

12. Copy of this order be furnished to the learned counsel for the parties and also be furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

13. Accordingly, the petition is allowed. Pending applications, if any, stand disposed of.

(G. S. Sandhawalia)
Chief Justice

17th July, 2026(sanjeev)