



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

109+203

ARB-225-2021 (O&M)
Date of Decision: 19.12.2025

M/s Jai Bala Ji Construction Company

.....Petitioner

Versus

Union of India and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Dheeraj Mahajan, Advocate and
Mr. J.S. Saini, Advocate for the petitioner.

Mr. Arvind Seth, Senior Panel Counsel for respondents.

JASGURPREET SINGH PURI J.(Oral)

CM-24598-CII-2025

1. On the last date of hearing, notice in the application was issued and Mr. Arvind Seth, Advocate, had appeared and sought time to file a reply.

2. Today, learned counsel for the respondents has stated that he has no objection in case the present application is allowed.

3. In view of the above, the present application is allowed, subject to all just exceptions.

4. The accompanying documents are taken on record as Annexures P-6 to P-8.

Main case

5. The present is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'),



seeking appointment of an independent Arbitral Tribunal to adjudicate upon the disputes which have arisen between the parties.

6. Learned counsel for the petitioner submitted that the petitioner entered into a contract with the respondent-Railways vide Annexure P-1. He further submitted that Annexure P-2 contains a valid arbitration clause, namely Clause 64. As per Clause 64(1)(i), it is provided that in the event of any dispute arising between the parties, the same shall be referred to arbitration, except in respect of the “excepted matters”, which would not be referred for arbitration. The aforesaid clause is reproduced as under:

“ 64(1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing the dispute or difference be referred to arbitration.”

7. Learned counsel for the petitioner further submitted that after allotment of the work, the work could not proceed because of non-supply of material by the respondents and the petitioner issued a notice to the respondents on 14.06.2017 vide Annexure P-3 for appointment of an



arbitrator. In pursuance of the aforesaid notice, the respondents appointed an arbitrator on 10.09.2018 unilaterally, who was an official and such appointment could not have been made as the same was in violation of the provisions of Section 12(5) of the Act and the law laid down by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and anr. v. HSCC (India) Limited, 2020 (20) SCC 760*** which holds that a party having an interest in the outcome of the dispute cannot unilaterally appoint an arbitrator, as it gives rise to justifiable doubts regarding independence and impartiality.

8. He submitted that with efflux of time, the mandate of the arbitrator stood terminated and the arbitral proceedings could not continue and therefore the present petition has been filed for appointment of an independent Sole Arbitrator. He also submitted that an objection has been raised by the respondents with regard to the fact that the claim of the petitioner was non-arbitrable because the same falls within the category of "excepted matters" as provided under Clause 63 of the Indian Railway Standard General Conditions of Contract Act, which has been reproduced in the reply filed by the respondents. While referring to the aforesaid Clause No.63, he submitted that there is no doubt that some of the matters were falling in the category of "excepted matters" but as to whether the present case also falls under the "excepted matters" category or not is to be decided by learned Arbitrator and not by this Court at the reference stage under Section 11 of the Act. He also submitted that even otherwise, the respondents have not been able to show as to how the case of the present petitioner would fall in the "excepted matters" category and



therefore, an independent Sole Arbitrator may be appointed. He submitted that as per the relevant clause, a Tribunal is to be constituted for appointment of an arbitrator, but, this Court may appoint a Sole Arbitrator in this regard.

9. On the other hand, learned counsel appearing on behalf of the respondents submitted that there is no dispute with regard to existence of the contract between the parties and existence of an arbitration clause and there is no dispute in case this Court appoints a Sole Arbitrator instead of a Tribunal so as to make the proceedings cost-effective. He however objected to the appointment of Arbitrator on the ground that the claim of the petitioner falls under the “excepted matters” category and therefore no Arbitrator can be appointed in this regard. He also referred to the aforesaid clause No.63 which has been referred to in para No.10 of the reply of respondents. While referring to the aforesaid clause, he submitted that the claim of the petitioner falls under Clause 62(1)(vi).

10. He submitted that since the petitioner had abandoned the contract and as a consequence thereof, the contract was rescinded by the respondents, the claim of the petitioner would fall under the aforesaid Clause 62(1)(vi), pertaining to abandonment of the contract, which was attributable to the petitioner and the same being non-arbitrable and falling under the excepted category, no arbitrator may be appointed in this regard.

11. I have heard learned counsels for the parties.

12. Before proceedings further the relevant clauses are reproduced as under:-



***“62.(1) Determination of Contract owing to
Default of Contractor:***

If the Contractor should:

- (i) Becomes bankrupt or insolvent, or*
- (ii) Make an arrangement for assignment in
favour of his creditors, or agree to carry out the contract
under a Committee of Inspection of his creditors, or*
- (iii) Being a Company or Corporation, go into
liquidation (other than a voluntary liquidation for the
purposes of amalgamation or reconstruction), or*
- (iv) Have an execution levied on his goods or
property on the works, or*
- (v) Assign the contract or any part thereof
otherwise than as provided in Clause 7 of these Conditions,
or*
- (vi) Abandon the contract, or (vii) Persistently
disregard the instructions of the Engineer, or contravene any
provision of the contract, or*
- (viii) Fail to adhere to the agreed programme of
work by a margin of 10% of the stipulated period, or*
- (ix) Fail to Execute the contract documents in
terms of Clause 8 of the Regulations for Tenders and
Contracts.*
- (x) Fails to submit the documents pertaining to
identity of JV and PAN in terms of Clause 17.11 of Tender*



Form available in the Regulations for Tenders and Contracts.

(xi) Fail to remove materials from the site or to pull down and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under Clause 25 and 27 of these Conditions, or

(xii) Fail to take steps to employ competent or additional staff and labour as required under Clause 26 of the Conditions, or

(xiii) Fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under Clause 28 of the Conditions, or

(xiv) Promise, offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with this Railway.

(xv) Fail to adhere to the provisions of Clause 16 of Tender Form (Second Sheet) of Annexure I of Part I 'Regulations for Tenders and Contract', or provision of above Clause 59(9).



(xvi) Submits copy of fake documents/certificates in support of credentials, submitted by the tenderer.

Then and in any of the **said Clause**, the Engineer on behalf of the Railway may serve the Contractor with a notice (Proforma at Annexure-IX) in writing to that effect and if the Contractor does not within seven days after the delivery to him of such notice proceed to make good his default in so far as the same is capable of being made good and carry on the work or comply with such directions as aforesaid of the entire satisfaction of the Engineer, the Railway shall be entitled after giving 48 hours' notice (Proforma at Annexure-X or XII, as the case may be) in writing under the hand of the Engineer to rescind the contract as a whole or in part or parts (as may be specified in such notice) and after expiry of 48 hours' notice, a final termination notice (Proforma at Annexure-XI or XIII, as the case may be) should be issued.

Note: Engineer at his discretion may resort to the part termination of contract with notices (Proforma at Annexure- IX, XII and XIII), only in cases where progress of work is more than or equal to 80% of the original scope of work.

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63.1 Matters Finally Determined by the Railway: All



disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 7(j), 8. 18. 22(5), 39, 43(2), 45(i)(a), 55, 55- A(5), 57, 57A.61(1), 61(2) and 62(1) of Standard General Conditions of Contract or in any Clause (stated as excepted matter) of the Special Conditions of the Contract, shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor, provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause.

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64.(1) Demand for Arbitration:

64.(1)(i): *In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the*



Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63.1 of these Conditions, the Contractor, the Contractor after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

***64.(1)(ii)(a):** The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.*

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64.(3)(a):Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:

***64.(3)(a)(i):** In cases where the total value of all claims in question added together does not exceed 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and*



valid demand for arbitration is received by General Manager.

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13. A perusal of the aforesaid clauses shows that there is no dispute with regard to existence of an arbitration clause but it also provides that in various “excepted matters” category, arbitration will not be applicable.

14. Learned counsel for the petitioner contended that the petitioner was unable to execute the work due to non-supply of materials by the respondents as the nature of the contract required the respondents to supply the same and in any case, the respondents have terminated the contract in the year 2015. He submitted that a dispute has arisen because of the termination of the contract and who is at fault can only be considered by the arbitrator at the time of arbitration.

15. On the other hand, it is the case of learned counsel for the respondents that the abandonment of contract was by the petitioner and therefore the present case falls in the category of abandonment of work which falls in the “excepted matters” category as aforesaid.

16. This Court is of the considered view that in light of the law laid down by Hon’ble Supreme Court in ***SBI General Insurance Company Limited Vs. Krish Spinning, 2024 SCC Online SC 1754***, this Court would not hold a mini trial with regard to the aforesaid issue as to whether it is a case of abandonment of contract or not. Once there is a dispute between the parties with regard to supply or non-supply of material, this court in the petition under Section 11 of the Act, would not ascertain as to whose fault it was and it is only on the basis of the fault



that any authority can come to the conclusion that whether the case falls in the “excepted matters” category or not. This exercise has to be undertaken by learned arbitrator only and not by this Court under Section 11 of the Act because the scope of a petition under Section 11 of the Act, at the reference stage is only limited to *prima facie* existence of an arbitration clause which is not disputed by learned counsel for the respondents. Therefore, admittedly there exists an arbitration clause. However, as to whether the case falls under the “excepted matters” category or not considering the rival submissions of both learned counsels for the parties, it will not be within the jurisdiction of this Court to decide the aforesaid fact as to whether it falls in the “excepted matters” category or not. On the basis of *prima facie* existence of the arbitration clause and the invocation of the said arbitration clause all the conditions for reference under Section 11 of the Act stand satisfied.

17. Recently, the Hon’ble Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***, dealt with this issue and observed that whether a matter falls under the excepted category cannot be considered at the time of the reference stage under Section 11 of the Act. The relevant portion of the aforesaid judgment is reproduced as under :-

6. The short question that falls for our consideration is whether while exercising power under Section 11 of the 1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.

7. Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while



considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

8. Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, sub-section (6A) of Section 11 of the 1996 Act remains in the statute book.

9. The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:

“(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.

(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

10. The significance of the use of the expression “not other issues” in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 18995, and it was observed:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an Arbitrator shall ‘examine the existence of prima facie arbitration agreement and not other issues’. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.”

11. Relying on the above observations made by this Court in In Re: Interplay (supra), a three-judge bench of this Court in “SBI General Insurance Co. Ltd. v. Krish Spinning⁶” observed:



“114.that the scope of enquiry at the stage of appointment of Arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in ‘Vidya Drolia v. Durga Trading Corporation⁷ (supra) and adopted in ‘NTPC v. SPML Infra Limited⁸ (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)”.

Emphasis Supplied

12.As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it.

18. In view of the aforesaid facts and circumstances, the present petition is allowed. Sh.Satvinder Singh, District & Sessions Judge (Retd.), resident of House No.390, IAS-PCS Society, Mullanpur, New Chandigarh, District S.A.S. Nagar, Punjab, Mobile No.9877979433, Email: chahalsatvindersingh@gmail.com, is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.



19. Parties are directed to appear before learned Arbitrator on date, time and place to be fixed and communicated by learned Arbitrator at his convenience.
20. Fee shall be paid to learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
21. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
22. A request letter alongwith a copy of the order be sent to Sh. Satvinder Singh, District & Sessions Judge (Retd.).

19.12.2025

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No