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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**ARB-221-2024 (O&M)
Date of Decision: 08.12.2025**

M/s Sokhi Contractors and Engineers

.... Petitioner

Versus

General Manager (Electrification) and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dheeraj Mahajan, Advocate &
Mr. Nivish Gautam, Advocate,
Mr. Jasjit S. Saini, Advocate,
for the petitioner.

Mr. Vinish Singla, Senior Panel Counsel,
for the respondents-UOI.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the Act') praying for appointment of an independent Sole Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Learned counsel for the petitioner submitted that the petitioner entered into a Contract with the respondent-Railways vide Annexure P-1 and the entire Contract has been attached along with the reply filed by the respondent vide Annexure R-8. He further submitted that there exists a valid arbitration clause i.e. Clause 64 in the aforesaid Contract and the same has been annexed along with the present petition vide Annexure P-2 which provides that in a case where the total value of all claims in question added together does not exceed ₹1,00,00,000/- (Rupees One Crore Only), then a Sole

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Arbitrator shall be appointed, who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager and the Sole Arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the railway. He submitted that there is no dispute with regard to the fact that the aforesaid arbitration clause provides for referring the matter to the Arbitrator. He further submitted that in the aforesaid arbitration clause, it is so provided that it will not be applicable to the excepted matter and in this regard, there is another clause in the aforesaid Contract i.e. Clause 63.1 wherein it has been so provided that those disputes which fall 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 shall be deemed as 'excepted matters'. He also submitted that the respondent is now disputing that the present dispute with the petitioner falls in the excepted matters category as mentioned in the aforesaid Clause 63.1 and also referred to the Clause 63.1 whereby the respondent has relied upon the clause of amendment of the Contract and thereafter, termination of the Contract. He further submitted that it is a case where the petitioner has never abandoned the Contract and rather the petitioner sent a legal notice to the respondent vide Annexure P-3 by stating that the respondent has not supplied the material to the petitioner and therefore, the petitioner-Company has not been able to commence the work and rather the petitioner has been financially suffering because of the conduct of the respondent.

3. Learned counsel for the petitioner further submitted that as per the Contract, the petitioner was to supply labour and the labour could work only when the respondent supplied material and the period of contract which



is mentioned in the Contract was six months which otherwise was also extended for time to time but even during the extended period of time, the respondent did not supply any material. He further submitted that in the event of respondent not supplying the material, the labour of the petitioner could not have commenced the work and therefore, the petitioner has invoked the aforesaid arbitration clause by serving a notice dated 26.03.2024 to the respondent vide Annexure P-9 and the respondent has replied to the aforesaid notice whereby they asked the petitioner to supply details of the claim so that necessary action can be taken. He further submitted that the entire nature of claim was already mentioned in Annexure P-3 which was a legal notice issued to the respondent and in this way, rather the respondent has been delaying the appointment of the Arbitrator despite existence of the aforesaid arbitration clause and therefore, the present petition has been filed under Section 11 of the Act for appointment of a Sole Arbitrator.

4. On the other hand, Mr. Vinish Singla, learned Senior Panel Counsel appearing on behalf of the respondent-UOI while referring to the Terms of Contract submitted that an Arbitrator cannot be appointed in the present case in view of the fact that the present case falls in the excepted matters category which is under Clause 62.1 and since it falls in the excepted matters category as per the aforesaid Clause 63.1, no Arbitrator can be appointed. He further submitted that although initial period of 6 months for completion of work was extended from time to time but later on since the petitioner did not commence the work, the respondent has terminated the Contract and since there is no clause pertaining to the arbitration for the aforesaid dispute and the case of the petitioner falls in the excepted matters category, the present petition is liable to be dismissed.



5. Learned counsel for the respondents further submitted that the respondent-Railway Administration has supplied entire material to the petitioner but despite the same they did not commence the work and now the petitioner cannot take a plea that the respondent has not supplied the material, therefore, the plea raised by the petitioner is not sustainable.

6. I have heard learned counsel for the parties.

7. Before proceeding further, the relevant clauses of the Contract are required to be 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 even 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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8. A perusal of the aforesaid clauses would show that there is no dispute that an arbitration clause does exist but it also provides that in various excepted matters category, the arbitration will not be applicable.

9. However, it was the case of learned counsel for the petitioner while referring to the notice issued by them to the respondent that they were not able to execute the work because of the non-supply of material by the respondent as the nature of the work was to supply labour work which was to be undertaken by the petitioner and the same could not have been done unless the material was supplied by the respondent. However, it was the case of learned counsel for the respondent that in fact the material was supplied but because of default of the petitioner which was a labour contractor, the work did not commence within the stipulated time period and that is why the



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Contract was terminated and therefore, the present case falls in the category of abandonment of work which is an excepted matter as per Clause 62.1 and hence, arbitrator cannot be appointed.

10. This Court is of the considered view that in view of the law settled 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. 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 will 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 as to 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 time of reference stage is only limited to *prima facie* existence of an arbitration clause as per the law laid down by Hon'ble Supreme Court in ***SBI General Insurance Company Limited (Supra)***. There does exist an arbitration clause. However, as to whether the case falls in the excepted matters category considering the rival submissions of both learned counsels for the parties, it will not be within a 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.

11. In view of the above, the present petition is allowed. Ms. Anjali Kukar, Advocate, resident of Flat No. 7, Angel Apartments, Zirakpur,

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Mobile No.9814214144, Email id. anjalikukar.adv@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.

12. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at her convenience.

13. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

14. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

15. A request letter alongwith a copy of the order be sent to Ms. Anjali Kukar, Advocate.

08.12.2025*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |