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

**ARB-587-2024 (O&M)
Date of Decision: 15.09.2025**

Kher Construction

..... Petitioner

Versus

Chief Engineer, Municipal Corporation, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Prashar, Advocate &
Mr. Nimanyu Gautam, Advocate for the petitioner.

Ms. Deepali Puri, Advocate for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

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

2. Learned counsel for the petitioner submitted that in the present case a contract was executed between the petitioner and the respondent for providing and laying 30 mm and 40 mm thick Bituminous Concrete on V3, V-4, V-5, & V-6 road in Sector 17, 18, 19, 20, 21, 22 & 33, Chandigarh. He further submitted that there was a valid existing agreement between the parties wherein a valid arbitration clause has also been incorporated. However, later on the arbitration clause was also amended which is at Page No.152 of the paper-book. He also submitted that as per the dispute redressal mechanism, in case, any dispute arises between the parties, the Contractor is to make an application to the Engineer Incharge and thereafter, in case no

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reply is received then the application will be given to the Chief Engineer and the matter was to be referred to the Dispute Redressal Committee (DRC) as per the aforesaid Clause, but despite resorting to the pre-arbitration mechanism, the respondent failed to refer the dispute to the Dispute Redressal Committee (DRC). In this regard, he referred to a letter dated 13.08.2024 (Annexure P-5) which was addressed to the Superintending Engineer (B&R), Municipal Corporation, Chandigarh, who was the Engineer Incharge that a dispute has arisen and the matter be decided within one month but nothing was done and thereafter, vide Annexure P-6, another letter dated 12.09.2024 was written to the Chief Engineer, Municipal Corporation that the Superintending Engineer (B&R), Municipal Corporation, Chandigarh has not responded and therefore, further necessary action be taken at his end. Still no action was taken by the Chief Engineer and even the matter was not referred to the Dispute Redressal Committee (DRC) as envisaged in the Arbitration Clause. Thereafter, the petitioner wrote a letter to the Chief Engineer, Municipal Corporation, Chandigarh on 15.10.2024 vide Annexure P-7 for referring the dispute to the Dispute Redressal Committee (DRC), but the same was not done and thereafter, vide Annexure P-8 on 06.11.2024, the arbitration clause was invoked by the petitioner because the pre-arbitration mechanism had failed but still no response was received from the respondent and therefore, the present petition has been filed under Section 11 of the Act.

3. On the other hand, Ms. Deepali Puri, learned counsel for the respondent has submitted that there is no dispute with regard to the existence of an agreement containing valid arbitration clause and the amendment of the arbitration clause. She however submitted that the claim of the petitioner



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is time-barred and the petitioner has not resorted to the pre-arbitration mechanism which was so stipulated in the clause and submitted that the respondent may be granted liberty to take both the aforesaid pleas and objections before the learned Arbitrator and therefore, she has got no objection in case any independent and impartial Arbitrator is appointed by this Court.

4. After hearing the learned counsels for the parties, this Court is of the considered view that the issue with regard to whether the claim is time-barred or not can only be seen by the Arbitrator at the time of arbitration proceedings and not by this Court under Section 11 of the Act as per the judgment passed by Hon'ble Supreme Court in "**SBI General Insurance Company Limited Vs. Krish Spinning**", **2024 SCC Online SC 1754** and also another judgment of Hon'ble Supreme Court in "**Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re**" (2024) 6 SCC 1.

5. Considering the aforesaid facts and circumstances the present petition is allowed. Mr. Justice (Retd.) Girish Agnihotri, a former Judge of this Court, resident of House No.215, Sector-9, Chandigarh, Mobile No.7009260001, Email id. ajagnihotri@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.

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

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

Arbitration Act.

8. Liberty is granted to the respondent to take up any such plea including the plea pertaining to the claim being time barred and the non-resorting of the pre-arbitration mechanism before the learned Arbitrator at appropriate stage and in accordance with law.
9. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Girish Agnihotri, a former Judge of this Court.

15.09.2025

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No