

**ARB-608-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****ARB-608-2025 (O&M)
Date of Decision:24.12.2025**

M/s Shri Ganesh Construction Firm

.....Petitioner

Versus

State of Haryana through Addl. Chief Secretary and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajvir Singh, Advocate for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana

Mr. Shivam Singh Chauhan, Advocate for
Mr. Ashok Kumar Khubbar, Addl. A.G. Haryana
for respondents No.3 to 8.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there exists a valid agreement between the parties with regard to the construction of the community centre. The conditions of the contract, which form part of the said agreement, have been annexed as Annexure P-9 along with the present petition which contains an arbitration clause at Clause 20-A(2), providing that in the event of any dispute between the parties, the matter

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shall be referred to a sole arbitrator and it also stipulates that the Superintending Engineer will be the sole arbitrator. He also submitted that the Superintending Engineer of the respondent-department cannot be appointed because of conflict of interest in view of Section 12(5) of the Act and therefore any sole arbitrator may be appointed by this Court. He further submitted that since disputes arose between the parties, the petitioner invoked the aforesaid clause by issuing a notice to the respondents vide Annexure P-10 dated 29.07.2025 but no response has been received from the respondents. Therefore, he submitted that this Hon'ble Court may appoint an independent and impartial arbitrator for adjudicating the dispute.

3. On the other hand, learned counsel appearing for respondents No.3 to 8 has filed a written statement, which is taken on record. He submitted that there is no dispute with regard to the existence of an arbitration clause or the service of notice upon the respondents. However, the objection raised by learned counsel for respondents No. 3 to 8 is that the entire amount has already been paid to the petitioner and, therefore, no claim is sustainable at the instance of the petitioner.

4. Learned State counsel appearing on behalf of the respondent-State has also referred to the agreement at Para No.20-A(7), which provides for deposit of a security amount to the extent of 10% of the claim amount for invoking the arbitration proceedings.

5. I have heard the learned counsels for the parties.

6. The agreement containing the aforesaid arbitration clause and the notice invoking the arbitration clause are not disputed by the learned

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counsel for the respondents. The objection raised by learned counsel appearing for respondents No. 3 to 8 is that the entire amount has been paid to the petitioner and in view of that no arbitrable dispute remains. However, this objection is not sustainable at the reference stage under Section 11 of the Act, as the said aspect is required to be examined by the learned Arbitrator and not by this Court at the stage of appointment of the arbitrator and therefore the objection is not sustainable. So far as the objection raised by learned State counsel with regard to the requirement of pre-deposit of 10% of the claim amount as security for invoking the arbitration clause is concerned, the same cannot operate to non-suit the petitioner. This issue has been considered by the Hon'ble Supreme Court in its judgment titled ***Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341***, wherein it was held that such a condition is violative of Article 14 of the Constitution of India. This Court is of the considered view that the aforesaid clause by itself, cannot become a ground for non-suiting the petitioner at the stage of consideration of a petition under Section 11 of the Act. However, the issue pertaining to deposit of the security amount may be considered by the learned Arbitrator at an appropriate stage of the arbitral proceedings and the said amount, if any, can always be adjusted or deducted during the course of the proceedings or at the final stage. Therefore, this objection cannot be sustained.

7. In view of the aforesaid facts and circumstances, the present petition is allowed. Sh. Kulwant Singh Rai (Boparai), Advocate, resident of House No. 1139, Sector-71, Mohali, Mobile No. 9814120718, Email:



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kulwant0096@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.

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

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

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

11. A request letter alongwith a copy of the order be sent to Sh. Kulwant Singh Rai (Boparai), Advocate.

24.12.2025

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(JASGURPREET SINGH PURI)
JUDGE

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