

255

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-649-2025 (O&M)
Date of decision: 27.11.2025

MUKESH KUMAR CONTRACTOR (NOW DECEASED) THROUGH
HIS LEGAL REPRESENTATIVES

...Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Lajpat Rai Sharma, Advocate
for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

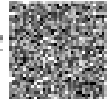
CM-22269-CII-2025

Prayer in this application is for impleading LR's of the petitioner,
namely, Mukesh Kumar, who is stated to have died on 27.12.2016.

For the reasons mentioned in the application, the same is allowed.
LR's of the petitioner as mentioned in para No.2 of the application are permitted
to be impleaded as party to this petition, subject to all just exceptions.

ARB-649-2025

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

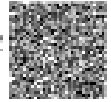


2. Learned counsel for the petitioner submitted that there exists an agreement between the parties and there also exists a valid arbitration clause i.e. Clause 25(a), which provides that in case any dispute arises between the parties, the same will be referred to the sole arbitration of any serving Superintending Engineer or Chief Engineer of Haryana Public Health Engineering Department to be nominated by designation by the Engineer-in-Chief. He further submitted that it is a settled law that an interested party cannot become an Arbitrator, particularly in view of the provisions of Section 12(5) of the Act and also in view of the judgment passed by Hon'ble Supreme Court in **Perkins Eastman Architects DPC and another versus HSCC (India) Limited, (2020) 20 SCC 760.** He further submitted that a notice invoking the arbitration clause was served upon the respondents vide Annexure P-9 dated 29.09.2025, but no response has been received from the respondents and therefore, the present petition has been filed seeking appointment of an independent Arbitrator.

3. On the other hand, Mr. Chirag Wadhwa, DAG, Haryana submitted on instructions that there is no dispute with regard to the existence of the aforesaid agreement and the arbitration clause. He has however submitted that the claim of the petitioner is time barred and he has submitted forged bills and there is a provision for pre-deposit of 10% as security for invoking the arbitration clause.

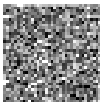
4. I have heard the learned counsels for the parties.

5. The existence of the aforesaid agreement and the arbitration clause is not in dispute. The invocation of the aforesaid arbitration clause by way of issuance of notice vide Annexure P-9 is also not in dispute. So far as the first



objection raised by learned State counsel with regard to the time barred nature of the claim is concerned, the same can only be considered by the learned Arbitrator and cannot be considered by this Court at the reference stage under Section 11 in view of the law laid down by Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754**. So far as the second objection raised by the learned State counsel that the bills submitted by the petitioner were forged and fabricated is concerned, the same is also a subject matter which is to be considered by the learned Arbitrator. So far as the third objection with regard to deposit of 10% security as a pre-deposit is concerned, the same can also be considered by the learned Arbitrator. In this regard, reference can be made to a judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341**, wherein it was held that the condition of pre-deposit is unconscionable being the result of inequality in bargaining power and violates the Right to Equality under Article 14 of the Constitution of India. In view of the aforesaid judgment passed by Hon'ble Supreme Court, this Court is of the considered view that the condition of pre-deposit imposed in the present case will be inequitable and violative of Article 14 of the Constitution of India and therefore, it will not be just and proper to non-suit the petitioner on the aforesaid basis and this issue can always be raised at an appropriate stage before the learned Arbitrator.

6. In view of the aforesaid facts and circumstances, the present petition is allowed. Ms. Vandana Reeta Kohli, Advocate, Office/Residence # 43, Sector-18-A, Chandigarh, Mobile No.-9815133553, E-mail ID-



Vandanaak353@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.

7. 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.

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

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

10. A request letter alongwith a copy of the order be sent to Ms. Vandana Reeta Kohli, Advocate.

27.11.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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