



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

ARB-185-2025 (O&M)
Date of decision : 15.05.2026

KCC Buildcon Pvt. Ltd.

.....Applicant

Versus

Haryana Shahari Vikas Pradhikaran and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. Gaurav Arora, Advocate, for the applicant.
Mr. Sharad Aggarwal, Advocate, for the respondents.

SHEEL NAGU, CHIEF JUSTICE

1. Instant application u/s 11 (4), (5) (6) and (8) of Arbitration and Conciliation Act, 1996 (for brevity, '1996 Act'), seeks appointment of Arbitrator.
2. Reply filed on behalf of the respondents is perused.
3. The rival parties herein entered into Contract Agreement containing an arbitration clause as follows :

“Clause 25 (A) :

(i) If any dispute or difference of any kind whatsoever shall arise between the HUDA/or authorized representative of HUDA and the contractor in connection with or arising out of the contract, or the execution of the work that is (i) whether before its commencement or during the progress of the work or after its completion, (ii) and whether before or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred to, for being settled by the Executive Engineer-in-Charge of the work at that time and Engineer-in-Charge shall within a period of sixty days after being requested, in writing, made by the contractor to do so, convey his decision to the



contractor, and subject to arbitration as hereinafter provided, such decision in respect of every matter so referred, shall be final and binding upon the contractor. In case the work is already in progress, the contractor will proceed with the execution of the work on receipt of the decision by the Executive Engineer-in-charge as aforesaid, with all due diligence whether HUDA/or authorized representative of HUDA or contractor requires arbitration as hereinafter provided for, or not. If the Executive Engineer, In-charge of the work has conveyed his decision to the contractor and no claim to arbitration has been filed with him by the contractor within a period of sixty days from the receipt of letter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all. If the Executive Engineer, In-charge of the work fails to convey his decision within period of sixty days, after being requested, as aforesaid, the contractor may, within further sixty days of the expiry of first sixty days, after being requested, from the date on which request has been made to the Executive Engineer In-Charge request the Engineer-in-Chief/Chief Engineer, HUDA that the matters in dispute be relevant to arbitration, as hereinafter provided.

(ii) All dispute or difference in respect of which the decision is not final and conclusive shall at the request, in writing, of either party, made in a communication sent through Registered A.D. Post, be referred to the sole arbitration of any serving Superintending Engineer of HUDA, to be nominated by designation by the Engineer-in-Chief/Chief Engineer, HUDA at the relevant time. There will be no objection to any such appointment that the arbitrator so appointed is a Govt. servant/in service of HUDA or that he had to deal with the matters to which the



contract relates in the course of his duties as a Govt. servant/in service of HUDA he has expressed his views on all or any of the matter in dispute. The Arbitrator to whom the matter is originally referred being transferred or vacating his office, his successor-in-office, as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

Or

In case the arbitrator nominated by the Engineer-in-Chief/Chief Engineer, HUDA is unable or unwilling to act as arbitrator such for any reason, whatsoever the Engineer-in-Chief/Chief Engineer, HUDA shall be competent to appoint and nominate any other Superintending Engineer of HUDA as arbitrator in his place and the arbitrator so appointed shall be entitled to proceed with the reference.

(iii) It is also a term of this arbitration agreement that no person other than a person appointed by the Engineer-in-Chief/Chief Engineer, HUDA shall act as arbitrator and if for any reason that is not possible the matter shall not be referred to arbitration at all. In all cases where the aggregate amount awarded exceeds Rs. 25000/- the arbitrator must invariable give reasons for his award in respect of each claim and counter/claims separately.

(iv) The arbitrator shall award separately giving his award against each claim and dispute raised by either party including any counter claim individually and that any lump-sum award shall not be legally enforceable.

(v) The following matters shall not lie within the purview of arbitration :-

- a) Any dispute relating to the levy of compensation, as liquidated damages, which has already been referred to the Superintending Engineer and is*



being heard or/and has been finally decided by the Superintending Engineer, In-Charge of the work.

- b) Any dispute in respect of substituted, altered, additional work/omitted work/defective work referred by the contractor for the decision of Superintending Engineer In-Charge of the work if it is being heard or has already been decided by the said Superintending Engineer.*
- c) Any dispute regarding the scope of the work or its execution or suspension or abandonment that has been referred by the contractor for the decision of the HUDA and has been so decided finally by the HUDA.*

(vi) The independent claims of the party other than the one getting the arbitrator appointed, as also counter-claims of any party will be entertained by the arbitrator notwithstanding that the arbitrator had been appointed at the instance of the other party.

(vii) It is also a term of this arbitrator agreement that where the party invoking arbitrator is the contractor, no reference for arbitrator shall be maintainable unless the contractor, furnishes to the satisfaction of the Executive Engineer In charge of the work, a security deposit of a sum determined according to details given below and the sum so deposited shall, on the termination of the arbitration proceedings, be adjusted against the cost, if any, awarded by the arbitrator against the claimant party and the balance remaining after such adjustment or whole sum in the absence of any such cost being awarded will be refunded to him within one month from the date of the award.

Amount of claims

Rate of security deposit

- i) For claims below Rs. 10,000/- 2% of amount claimed*



- ii) *For claims of Rs. 10,000/- and 5% of amount claimed above & below Rs. 1,00,000/-*
- iii) *For claims of Rs. 1,00,000/- 7½% of amount claimed and above*

The Stamp-fee due on the award shall be payable by the party as desired by the arbitrator and in the event of such party's default the Stamp-fee shall be recoverable from any other sum due to such party under this or any other contract.

(viii) *The venue of arbitration shall be such places as may be fixed by the arbitrator at his sole discretion. The work under the contract shall continue during the arbitration proceedings.*

(ix) *Neither party shall be entitled to bring a claim for arbitration if the appointment of such arbitrator has not been applied within 6 months :-*

- a) Of the date of completion of the work as certified by Executive Engineer-In-Charge, or*
- b) Of the date of abandonment of the work, or*
- c) Of its non-commencement within 6 months from the date of allotment or written orders to commence the work as applicable, or*
- d) Of the completion of the work through any alternative agency or means after withdrawal of the work from the contractor in whole or in part and/or its recession, or*
- e) Of receiving any intimation from the Executive Engineer-In-Charge of the work that final payment due to or recovery from the contractor had been determined which he may acknowledge and/or receive.*

Whichever of (a) to (e) above is the latest.

If the matter is not referred to arbitration within the period prescribed above, all the rights and claims of any



party under the contract shall be deemed to have been forfeited and absolutely barred by time even for civil litigation notwithstanding.

(x) It is also a term of this arbitration agreement that no question relating to this contract shall be brought before any Civil Courts without first involving and completing the arbitration proceedings as above. If the scope of the arbitration specified herein covers issues that can be brought before the arbitrator i.e. any matter that can be referred to arbitration shall not disentitle the Engineer-In-Charge, HUDA to terminate the contract and make alternative arrangements for the completion of the work.

(xi) The arbitrator shall be deemed to have entered on the reference on the day he issues notices to the parties fixing the first date of hearing. The arbitrator may, from time to time, with the consent of the parties enlarge the initial time for making and publishing the award.

(xii) It is also a term of this arbitration agreement that subject to the stipulation herein mentioned, the arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration Act, 1940 or any other law in force for the time being.”

3.1 Dispute erupted between the parties. The applicant sent letter dated 12.08.2024 (Annexure P-4) to the Executive Engineer, under clause 25 (A) (i) as contemplated in the Contract Agreement, for settlement of its claims. However, the respondents failed to settle the claims of the applicant within stipulated period of 60 days, as contemplated in Clause 25 (A) (i). The applicant, thereafter, served notice dated 06.11.2024 (Annexure P-5) upon the respondents seeking resolution of dispute through Arbitral Tribunal, but to no avail.



4. Learned counsel for the respondents could not dispute the existence and execution of arbitration agreement, exhaustion of remedy by applicant under the arbitration clause in the agreement between rival parties, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood. However, learned counsel for the respondents raised an objection with regard to maintainability of the present application on the ground that the same is barred by limitation.

5. The law regarding the scope of examination u/s 11 (6) of 1996 Act is well settled. At the stage of considering an application for appointment of an Arbitrator, the Court is only required to undertake a limited prima facie examination as to the existence and validity of the arbitration agreement and whether the disputes are manifestly arbitrable. Unless it is *ex facie* clear that the arbitration agreement is non-existent, invalid, or the disputes are demonstrably non-arbitrable, the matter ought to be referred to arbitration.

6. The Apex Court in **Vidya Drolia Vs. Durga Trading Corporation, (2021) 2 SCC 1, NTPC Ltd. Vs. SPML Infra Ltd., 2023 (9) SCC 385,** and **DLF Home Developers Ltd. Vs. Rajapura Homes (P) Ltd., (2021) 2 SCC 675,** has consistently held that the referral Court, while exercising jurisdiction u/s 11 of 1996 Act, is not expected to conduct a mini trial or enter into a detailed adjudication of disputed questions. The rule is : “when in doubt, do refer”.

7. In the opinion of this Court, as the pre-requisites for invoking power u/s 11 (6) of 1996 Act stand satisfied, the objections raised by the respondents do not constitute a valid impediment to the exercise of this Court’s power to appoint an Arbitrator.



8. Accordingly, this application is allowed.
- 8.1 Mr. Justice Vineet Kothari, former Acting Chief Justice of Gujarat High Court, is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.
9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.
10. The Arbitrator is appointed with liberty to determine jurisdiction and rule on any objections including that of limitation (but not limited to), ruling on objections with respect to the existence or validity of the arbitration agreement, and the scope of the Arbitrator’s authority in accordance with Section 16 of 1996 Act.
11. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of 1996 Act, as amended from time to time, or fee as agreed to by the parties.
12. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.
13. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.
14. A request letter along with copy of this order be sent to Mr. Justice Vineet Kothari, former Acting Chief Justice of Gujarat High Court

(SHEEL NAGU)
CHIEF JUSTICE

May 15, 2026
narotam

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