

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

2026:PHHC:009973



(263)

ARB-349-2025(O&M)

Date of Decision: 22.01.2026

M/s Shinryo Suvidha Engineers India Pvt. Ltd.

--Petitioner

Versus

Cosmas Research Lab Ltd.

--Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI.

Present:- Mr. Kartik Rai, Advocate for the petitioner.

Mr. Nitin Thatai, Advocate for respondent.

JASGURPREET SINGH PURI.J (Oral)

1. The present petition has been filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of an independent Arbitrator.

2. Learned counsel for the petitioner submits while giving facts of the case that there was an agreement (Annexure P-2) between the petitioner and the respondent, wherein there is an arbitration clause at paragraph no.5.3.15, which is reproduced as under:-

“ ARBITRATION:

Except where otherwise provided in the Contract, all questions and disputes, relating to the meaning of specifications, designs, drawings and instructions here in before mentioned and as to the quality of workmanship or materials used on the work or as arising, out of or relating to the Contract, designs, drawings, specifications, estimates, instructions, orders or those conditions concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be

referred to arbitration subject to the provisions of the Arbitration and Cancellation Act, 1996 or any Statutory modification or re-enactment thereof and the rules made there under and for the time being in force.

APPOINTMENT OF ARBITRATION TRIBUNAL & COSTS OF PROCEEDINGS:

Such arbitration shall be conducted by an arbitral tribunal of three arbitrators. one arbitrator will be appointed by the contractor and one will be appointed by the Employer. Both these arbitrators shall be members of the institution of Engineers (India). The two appointed arbitrators shall appoint a third arbitrator who shall act as the presiding arbitrator. The third arbitrator shall be a fellow of the ASHRAE/ISHRAE. The cost of appointment of the third arbitrators (Presiding Arbitrator) and cost of proceeding shall be shared equally by both the parties.

The Arbitration Tribunal so appointed shall proceed with arbitration at the place to be decided by the tribunal and shall be appropriate for hearing witness experts or the parties & for inspection of goods, documents or property.”

3. Counsel submitted that when a dispute arose between the parties, the respondent instead of invoking the arbitration clause, filed a civil suit for mandatory injunction and for recovery of damages before learned Additional District Judge, Commercial Court, Ludhiana. In the aforesaid civil suit, the petitioner did not file any application under Section 8 of the Arbitration Act but at the same time, he had taken specific objection in the written statement that when there is an arbitration clause, the civil suit was not maintainable. However, he also filed an application for treating the aforesaid objection as a preliminary objection but the same was rejected by learned Additional District Judge and thereafter the petitioner assailed the aforesaid order by which his application for dismissal of civil suit was

rejected by filing a civil revision petition before this Court. This Court in CR-6249-2016, which has been attached with the reply as Annexure R-2, dismissed the same. Thereafter, the petitioner preferred SLP (Civil) No.28166-2017, which was also dismissed vide order Annexure R-3. Thereafter, the civil suit commenced and ultimately vide judgement dated 04.09.2024 (Annexure P-6) the civil suit was dismissed only on the ground of maintainability because of the existence of an arbitration clause and the civil suit was not decided on merits but was dismissed only because of the aforesaid reason. Counsel has referred to paragraph no.17 of the aforesaid judgement, which reads as under:-

“17 Learned counsel for the plaintiff has submitted that the matter with regard to the maintainability and ouster of the jurisdiction of the civil court has already been decided between the parties upto the Hon'ble High Court, when an application was moved by the defendants for taking issues no.3 to 5 as preliminary issues. So, the defendants cannot agitate the same. But, I do not agree with this contention because the matter before the court was with regard to the treating of issues no. 3 to 5 as preliminary issues, which the court declined to treat as preliminary issues vide order dated 4.8.2016 and the order of the Ld. trial court was upheld by the higher courts. There is no finding from any court with regard to maintainability or jurisdiction of the civil courts. Now, as discussed above, it is clear that when there was an arbitration clause in the agreement Ex.P5 executed between the parties, the matter is to be settled by referring the case to the Arbitration Tribunal, which is to be constituted as per the provisions of clause 5.3.15 of the agreement. So, when there is arbitration clause, the civil suit is not maintainable. When the civil suit is not maintainable and the jurisdiction of the civil court is excluded due to incorporation of the arbitration clause in the agreement between the parties Ex. P5, then the relief of

mandatory injunction and damages as sought by the plaintiff, cannot be granted.”

4. While again referring to the aforesaid judgement, counsel submits that the civil suit which was filed by the respondent for mandatory injunction and damages was never decided on merits and it was rather dismissed on the ground of maintainability because of the existence of an arbitration clause. Thereafter, none of the parties assailed the aforesaid judgement passed by learned Civil Court and after that the petitioner invoked the arbitration clause by issuance of notice dated 17.01.2025 (Annexure P-7) since the dispute was still in existence and the petitioner was within its rights to have invoked the arbitration clause and also nominated his proposed Arbitrator but the same was not replied by the respondent and therefore, the present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointing any independent sole Arbitrator.

5. On the other hand, learned counsel for the respondent submitted that the present petition is not maintainable because of two reasons. Firstly, it is hit by the doctrine of *res judicata* and secondly it is hit by the law of limitation. On the ground of *res judicata*, he submitted that once the respondent had filed a civil suit which has already been decided, although, it has been dismissed on the ground of maintainability, no such petition under Section 11 of the Arbitration and Conciliation Act, 1996 can be filed. So far as the issue of limitation is concerned, he submitted that the contract/agreement (Annexure P-2) is dated 03.06.2010 and the dispute arose on 12.07.2013 pertaining to the recovery of money as well as the contractual disputes. The notice (Annexure P-7) for invoking the arbitration clause has been served on 17.01.2025 which is way beyond the period of

limitation and therefore, not only the claim is barred but also filing of the present petition is barred by limitation. Learned counsel for respondent has referred to the judgement of **M/s Geo Miller & Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd., 2019 SCC Online SC 1137.**

6. I have heard the learned counsel for the parties.

7. The existence of the aforesaid arbitration clause and serving of notice for invoking the arbitration clause is not in dispute. The first objection which was raised by learned counsel for the respondent was with regard to the issue of *res judicata*. A perusal of the judgement (Annexure P-6) of suit filed by the respondent for mandatory injunction and recovery of damages would show that the same has not been decided on merits and rather specifically it has been dismissed on the ground of maintainability because of the existence of the arbitration clause. Since the dispute has not been decided by way of a civil suit on merits and rather it has been dismissed on the ground of existence of the arbitration clause it cannot operate as *res judicata*, therefore, the first objection raised by learned counsel for the respondent, is not sustainable.

8. So far as the second objection raised by learned counsel for the respondent with regard to the limitation is concerned, the law in this regard is well settled. It is a settled law that the period of limitation or filing a petition under Section 11 of the Arbitration and Conciliation Act, 1996 would be reckoned from the date the notice invoking the arbitration clause is served upon the other party. This period will not reckon from the date of breach of any contract or dispute. There is a distinction between a claim to be made and petition under Section 11 to be filed. So far as the claim being

time barred is concerned, the same is also a fact which can be gone into and is within the scope and subject matter of the Arbitrator or the Arbitral Tribunal. In other words, the issue with regard to the time barred claim is not to be gone into by this Court at the reference stage under Section 11 of the Act but can be seen only by the Arbitrator/Arbitration Tribunal at the relevant stage.

9. So far as the limitation pertaining to filing of the petition under reference is concerned, the same is 3 years from the date of service of the notice. Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. Vs. Krish Spinning, 2024 SCC OnLine SC 1754** dealt with this issue in detail and the relevant portion of the same is reproduced as under:-

“127. In Arif Azim (supra), while deciding an application for appointment of arbitrator under Section 11(6) of the Act, 1996, two issues had arisen for our consideration:

i. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the petition filed by M/s Arif Azim was barred by limitation?

ii. Whether the court may decline to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time -barred?

128. On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963, i.e., 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in paragraph 56 of the said decision that "the limitation period

for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice."

10. The aforesaid judgement of **M/s Geo Miller** (supra) referred to by learned counsel for the respondent has been dealt with by the Hon'ble Supreme Court in a latest judgement passed in case of **M/s Arif Azim Co. Ltd. Vs. M/s Aptech Ltd, 2024 SCC OnLine SC 215** and the aforesaid judgement has been clarified in **SBI General Insurance** (supra). Therefore, the reliance placed upon by learned counsel for respondent in case of **M/s Geo Miller** (supra), is misplaced.

11. In the present case, the date of issuance of notice, which is not denied by the petitioner, is 17.01.2025 and the present petition has been filed on 16.05.2025 which is within the period of 3 years. Therefore, the present petition is within the period of limitation of 3 years.

12. The petitioner has already nominated the Arbitrator namely Mr. Ramakant Upadhyaya, R/o 4/14, Lal Bahadur Shastri Sanskrit University, Katwaria Sarai, New Delhi, Mob. No.9911104422, therefore, the second Arbitrator is required to be appointed by this Court since the respondent has failed to respond to the notice served by the petitioner.

13. In view of the facts and circumstances noticed hereinabove and submissions of learned counsel for parties, this Court is of the considered view that all the essential conditions for appointment of an Arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996, stands satisfied. Consequently, the present petition is allowed. Mr. R.L. Ahuja, Additional District & Sessions Judge (Retd.), #4-A, Palam Vihar Pakhowal Road,

V Daad, Ludhiana 142022, Mobile: 9888353526 is nominated by this Court as Second Arbitrator, subject to compliance of statutory provisions including Section 12 of the Act. The Arbitrator nominated by the petitioner i.e. Mr. Ramakant Upadhyay and the Second Arbitrator appointed by this Court i.e. Mr. R.L. Ahuja, Additional District & Sessions Judge (Retd.) will nominate/select the Presiding Arbitrator thereby constituting an Arbitral Tribunal as per the arbitration clause.

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

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

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

17. A request letter along with a copy of the order be sent to Mr. R.L. Ahuja, Additional District & Sessions Judge (Retd.).

(JASGURPREET SINGH PURI)
JUDGE

22.01.2026

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No