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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

ARB-403-2025 (O&M)

Date of Decision: 19.03.2026

M/S ROY CONSTRUCTION JALANDHAR

.... Petitioner

Versus

THE GENERAL MANAGER (ENGINEER), NORTHERN RAILWAY,
BARODA HOUSE, NEW DELHI AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Vinish Singla, Senior Panel Counsel,
for the respondents.

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') as amended by the Arbitration and Conciliation (Amendment) Act, 2015, 2019 praying for appointment of an independent Sole Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Learned counsel for the petitioner submitted that the petitioner entered into a Contract with the respondent-Railways vide Annexure P-1. He further submitted that there exists a valid arbitration clause i.e. Clause 64 in the aforesaid Contract and the same has been annexed along with the present petition vide Annexure P-2 which provides that in a case where the total value of all claims in question added together does not exceed ₹1,00,00,000/-



(Rupees One Crore Only), then a Sole Arbitrator shall be appointed, who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager and the Sole Arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the General Manager. He submitted that there is no dispute with regard to the fact that the aforesaid arbitration clause provides for referring the matter to the Arbitrator. He further submitted that in the aforesaid arbitration clause, it is so provided that it will not be applicable to the excepted matter and in this regard, there is another clause in the aforesaid Contract i.e. Clause 63.1 wherein it has been so provided that those disputes which fall in Clauses 7(j), 8, 18, 22(5), 39, 43(2), 45(i)(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) of Standard General Conditions of Contract shall be deemed as 'excepted matters'. He also submitted that the respondent is now disputing that the present dispute with the petitioner falls in the excepted matters category as mentioned in the aforesaid Clause 63.1 and also referred to the Clause 63.1 whereby the respondent has relied upon the clause of amendment of the Contract and thereafter, termination of the Contract. He further submitted that it is a case where the petitioner has never abandoned the Contract and rather the petitioner sent a legal notice to the respondent vide Annexure P-5 by stating that the respondent has not supplied the material to the petitioner and therefore, the petitioner-Company has not been able to commence the work and rather the petitioner has been financially suffering because of the conduct of the respondent.

3. Learned counsel for the petitioner further submitted that as per the Contract, the petitioner was to supply labour and the labour could work only when the respondent supplied material and the period of contract which



is mentioned in the Contract was six months which otherwise was also extended from time to time but even during the extended period of time, the respondent did not supply any material. He further submitted that in the event of respondent not supplying the material, the labour of the petitioner could not have commenced the work and therefore, the petitioner has invoked the aforesaid arbitration clause by serving a notice dated 07.05.2025 to the respondent vide Annexure P-5 and the respondent has replied to the aforesaid notice whereby they asked the petitioner to withdraw the notice as the matter falls in the "Excepted Matter" category and therefore not subject to arbitration. Therefore, the present petition has been filed under Section 11 of the Act for appointment of a Sole Arbitrator.

4. On the other hand, Mr. Vinish Singla, learned Senior Panel Counsel appearing on behalf of the respondent-UOI while referring to the Terms of Contract submitted that an Arbitrator cannot be appointed in the present case in view of the fact that the present case falls in the excepted matters category which is under Clause 62.1 and since it falls in the excepted matters category as per the aforesaid Clause 63.1, no Arbitrator can be appointed. He further submitted that although initial period of 6 months for completion of work was extended from time to time but later on since the petitioner did not commence the work, the respondent has terminated the Contract and since there is no clause pertaining to the arbitration for the aforesaid dispute and the case of the petitioner falls in the excepted matters category, the present petition is liable to be dismissed.

5. Learned counsel for the respondents further submitted that the respondent-Railway Administration has supplied entire material to the petitioner but despite the same they did not commence the work and now the



petitioner cannot take a plea that the respondent has not supplied the material, therefore, the plea raised by the petitioner is not sustainable.

6. I have heard learned counsel for the parties.

7. Before proceeding further, the relevant clauses of the Contract are required to be reproduced as under:-

“62.(1) Determination of Contract owing to Default of Contractor:

If the Contractor should:

- (i) Becomes bankrupt or insolvent, or*
- (ii) Make an arrangement for assignment in favour of his creditors, or agree to carry out the contract under a Committee of Inspection of his creditors, or*
- (iii) Being a Company or Corporation, go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or*
- (iv) Have an execution levied on his goods or property on the works, or*
- (v) Assign the contract or any part thereof otherwise than as provided in Clause 7 of these Conditions, or*
- (vi) Abandon the contract, or*
- (vii) Persistently disregard the instructions of the Engineer, or contravene any provision of the contract, or*
- (viii) Fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or*
- (ix) Fail to Execute the contract documents in terms of Clause 8 of the Regulations for Tenders and Contracts.*
- (x) Fails to submit the documents pertaining to identity of JV and PAN in terms of Clause 17.11 of Tender Form available in the Regulations for Tenders and Contracts.*
- (xi) Fail to remove materials from the site or to pull down and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under Clause 25 and 27 of these Conditions, or*
- (xii) Fail to take steps to employ competent or additional staff and labour as required under Clause 26 of the Conditions, or*
- (xiii) Fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under*



- Clause 28 of the Conditions, or*
- (xiv) Promise, offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with this Railway.*
 - (xv) Fail to adhere to the provisions of Clause 16 of Tender Form (Second Sheet) of Annexure I of Part I 'Regulations for Tenders and Contract', or provision of above Clause 59(9).*
 - (xvi) Submits copy of fake documents/certificates in support of credentials, submitted by the tenderer*

*Then and in any of the **said Clause**, the Engineer on behalf of the Railway may serve the Contractor with a notice (Proforma at Annexure-IX) in writing to that effect and if the Contractor does not within seven days after the delivery to him of such notice proceed to make good his default in so far as the same is capable of being made good and carry on the work or comply with such directions as aforesaid of the entire satisfaction of the Engineer, the Railway shall be entitled after giving 48 hours' notice (Proforma at Annexure-X or XII, as the case may be) in writing under the hand of the Engineer to rescind the contract as a whole or in part or parts (as may be specified in such notice) and after expiry of 48 hours' notice, a final termination notice (Proforma at Annexure-XI or XIII, as the case may be) should be issued.*

Note: Engineer at his discretion may resort to the part termination of contract with notices (Proforma at Annexure- IX, XII and XIII), only in cases where progress of work is more than or equal to 80% of the original scope of work.

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63.1 Matters Finally Determined by the Railway: *All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 7(j), 8. 18. 22(5), 39, 43(2), 45(i)(a), 55, 55-*



A(5), 57, 57A.61(1), 61(2) and 62(1) of Standard General Conditions of Contract or in any Clause (stated as excepted matter) of the Special Conditions of the Contract, shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor, provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause.

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64.(1) Demand for Arbitration:

64.(1)(i): *In the even of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63.1 of these Conditions, the Contractor, the Contractor after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.*

64.(1)(ii)(a): *The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.*

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64.(3)(a):Appointment of Arbitrator where applicability

of section 12 (5) of Arbitration and Conciliation



Act has been waived off:

64.(3)(a)(i): *In cases where the total value of all claims in question added together does not exceed 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.*

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8. A perusal of the aforesaid clauses would show that there is no dispute that an arbitration clause does exist but it also provides that in various excepted matters category, the arbitration will not be applicable.

9. However, it was the case of learned counsel for the petitioner while referring to the notice issued by them to the respondent that they were not able to execute the work because of the non-supply of material by the respondent as the nature of the work was to supply labour work which was to be undertaken by the petitioner and the same could not have been done unless the material was supplied by the respondent. However, it was the case of learned counsel for the respondent that in fact the material was supplied but because of default of the petitioner which was a labour contractor, the work did not commence within the stipulated time period and that is why the Contract was terminated and therefore, the present case falls in the category of abandonment of work which is an excepted matter as per Clause 62.1 and hence, arbitrator cannot be appointed.

10. This Court is of the considered view that in view of the law settled by Hon’ble Supreme Court in “***SBI General Insurance Company***



Limited Vs. Krish Spinning”, 2024 SCC Online SC 1754, this Court would not hold a mini trial with regard to the aforesaid issue. Once there is a dispute between the parties with regard to supply or non-supply of material, this Court in the petition under Section 11 of the Act will not ascertain as to whose fault it was and it is only on the basis of the fault that any authority can come to the conclusion as to whether the case falls in the excepted matters category or not. This exercise has to be undertaken by learned Arbitrator only and not by this Court under Section 11 of the Act because the scope of a petition under Section 11 of the Act at the time of reference stage is only limited to *prima facie* existence of an arbitration clause as per the law laid down by Hon’ble Supreme Court in ***SBI General Insurance Company Limited (Supra)***. There does exist an arbitration clause. However, as to whether the case falls in the excepted matters category considering the rival submissions of both learned counsels for the parties, it will not be within a jurisdiction of this Court to decide the aforesaid fact as to whether it falls in the excepted matters category or not. On the basis of *prima facie* existence of the arbitration clause and the invocation of the said arbitration clause, all the conditions for reference under Section 11 of the Act stand satisfied.

11. Recently, the Hon’ble Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***, dealt with this issue and observed that whether a matter falls under the excepted category cannot be considered at the time of the reference stage under Section 11 of the Act. The relevant portion of the aforesaid judgment is reproduced as under :-

“6.The short question that falls for our consideration is whether while exercising power under Section 11 of the



1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.

7. Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

8. Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, subsection (6A) of Section 11 of the 1996 Act remains in the statute book.

9. The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:

“(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.

(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

10. The significance of the use of the expression “not other issues” in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1895, and it was observed:



“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an Arbitrator shall ‘examine the existence of prima facie arbitration agreement and not other issues’. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.”

11. Relying on the above observations made by this Court in In Re: Interplay (supra), a three-judge bench of this Court in “SBI General Insurance Co. Ltd. v. Krish Spinning⁶” observed:

“114.that the scope of enquiry at the stage of appointment of Arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in ‘Vidya Drolia v. Durga Trading Corporation⁷ (supra) and adopted in ‘NTPC v. SPML Infra Limited⁸ (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)”.

Emphasis Supplied

12. As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the view that the respondent cannot profit from certain observations made by a two Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes



between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it.

12. In view of the above, the present petition is allowed. Ms. Gursharan Kaur Mann, Senior Advocate, resident of House no. 255, Sector 11A, Chandigarh, Office: Chamber No. 67, Court Complex, Punjab and Haryana High Court, Chandigarh, Mobile No. 9815386332, E-mail ID: gurpriamann@yahoo.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.

13. 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.

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

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

16. A request letter alongwith a copy of the order be sent to Ms. Gursharan Kaur Mann, Senior Advocate.

19.03.2026
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |