

253-A

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-437-2025

Date of decision: 25.03.2026

M/S GARG AND COMPANY

...Applicant(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ranjit Singh Kalra, Advocate and
Ms. Sanah Sahni, Advocate for the applicant.

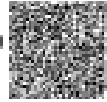
Mr. Udit Garg, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present application has been filed under Section 11 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.

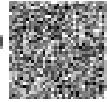
2. Learned counsel for the applicant submitted that there exists an agreement between the parties which contains a standard bidding document (Annexure P-1) and by virtue of the conditions of the contract contained in Clause 24.3, it is provided that for disputes relating to contract(s) of value higher than Rs.10 crores, the Agency may first appeal to the concerned Superintending Engineer and in case the Contractor is not satisfied with the appeal, he can go for the arbitration, which shall be done by three members Tribunal.

3. Learned counsel for the applicant submitted that earlier when a dispute arose between the parties, an Arbitrator was appointed by a Division



Bench of this Court in CWP-1916-2022 and thereafter, the arbitration proceedings commenced and the learned Arbitrator passed an award in respect of the dispute pending between the parties on 09.04.2024. After the passing of the award, the respondents terminated the contract on 12.11.2024 i.e. after about seven months and in this way, another dispute has arisen between the parties after the passing the award, which is a fresh dispute. He further submitted that since a fresh dispute has arisen between the parties after the passing of the award, the applicant issued a notice invoking the arbitration clause vide Annexure P-7 dated 13.11.2024. While referring to paragraph No.10 of the aforesaid notice, he submitted that it is stated therein that serious loss has been caused to the applicant and the tentative claim of the applicant towards opportunity loss, profit, retention of due amount and security etc. is Rs.5 crores. He further submitted that the details for invoking arbitration have been provided in the aforesaid notice and the claims which are now being made by the applicant were neither made nor adjudicated upon by the learned Arbitrator and pertain only to the consequences of the termination order, which was passed after the award as the award was passed on 09.04.2024 and the termination order was passed on 12.11.2024 and in this way, a fresh cause of action has arisen and therefore, fresh arbitration proceedings are required to be initiated.

4. Learned counsel for the applicant submitted that as per Clause 24.3, since the claim is more than Rs.10 crores, an Arbitral Tribunal is to be constituted but considering the fact that when earlier the matter was disputed between the parties in CWP-1916-2022, instead of constituting an Arbitral Tribunal only a Sole Arbitrator was appointed with the consent of the parties



and therefore, any independent Sole Arbitrator may also be appointed in the present case.

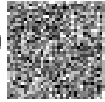
5. On the other hand, Mr. Udit Garg, Addl. A.G., Haryana submitted that the applicant cannot be permitted to repeat the claims which it had already made before the learned Arbitrator and that the notice which was issued by the applicant for invoking the arbitration clause vide Annexure P-7 was vague in nature and did not quantify the claim and therefore, no fresh Arbitrator can be appointed. He further submitted that the learned Arbitrator while passing the award had specifically observed that there was a breach of contract by the applicant.

6. Learned State counsel submitted that as per Clause 24.3, if the claim is more than Rs.10 crores, an Arbitral Tribunal is to be constituted but in case the Court is inclined to allow the present arbitration case, then the respondent-State is not averse to appointment of a Sole Arbitrator considering the cost factor.

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

8. The agreement between the parties along with the arbitration clause contained therein has not been disputed by the learned State counsel and is rather admitted by him. The issuance of notice for invoking the arbitration clause dated 13.11.2024 vide Annexure P-7 is also not in dispute.

9. The only objection which has been raised by the learned State counsel is that an award has already been passed on 09.04.2024 and even if the termination order was passed after the aforesaid award i.e. on 12.11.2024, no fresh arbitration proceedings can take place because the learned Arbitrator has

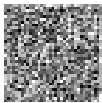


already recorded a finding that the applicant committed a default and the notice now issued is vague in nature.

10. On the aforesaid objection raised by the learned State counsel, the learned counsel for the applicant during the course of arguments has referred to a judgment of Hon'ble Supreme Court in **Dolphin Drilling Ltd. versus Oil & Natural Gas Corp. Ltd., 2010 (3) SCC 267** to state that even the issue with regard to *res judicata*, if any, can be raised only before the learned Arbitrator and does not lie within the scope of Section 11 of the Act at the reference stage.

11. It is not in dispute that an award was passed on 09.04.2024 and some disputes between the parties have been adjudicated but the fact remains that the contract was terminated seven months after the passing of the award, i.e., on 12.11.2024 and therefore, certainly it constitutes a fresh cause of action and since there is an arbitration clause in the agreement which is not in dispute, there is no bar to the appointment of an Arbitrator for the fresh cause of action.

As to what are the consequences of the termination and as to on what account they are to be claimed or ascertained by the claimant, the same lies within the scope of the learned Arbitrator at an appropriate stage and not before this Court at the reference stage under Section 11 of the Act. It is a settled law that at the reference stage, the Court only has to see the *prima facie* existence of the arbitration clause and its invocation, which otherwise have not been disputed by the learned State counsel. The objection which has been raised by the learned State counsel can only be seen by the learned Arbitrator at an appropriate stage. Reference in this regard to the aforesaid settled law may be made to the judgments of Hon'ble Supreme Court in **SBI General Insurance Co. Ltd.**



versus Krish Spinning, 2024 SCC OnLine SC 1754 and Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1.

12. In view of the aforesaid facts and circumstances, the present application is allowed. Mr. Justice Vivek Puri, a former Judge of this Court, resident of House No.237, Sector 16-A, Chandigarh, mobile No.-8558800190, e-mail ID-vivekpuri1962@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.

13. Liberty is granted to the respondents to take all the legally permissible pleas available to them in accordance with law before the learned Arbitrator at an appropriate stage.

14. Parties are directed to appear before the learned Arbitrator 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 Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

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

17. A request letter alongwith a copy of the order be sent to Mr. Justice Vivek Puri, a former Judge of this Court.

(JASGURPREET SINGH PURI)
JUDGE

25.03.2026
Chetan Thakur

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