



FAO-CARB-41-2023 (O&M)

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

FAO-CARB-41-2023 (O&M)**Date of decision: 30.04.2026**

SCM XPRESS PRIVATE LIMITED

....Appellant

Versus

HARYANA STATE WAREHOUSING CORPORATION

...Respondent

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Shikhar Sarin, Advocate
for the appellant.

Mr. Aman Bahri, Sr. Advocate with
Mr. Shubham Pathania, Advocate
for the respondent.

ASHWANI KUMAR MISHRA, J. (Oral)**CM-56-FCARB-2026**

Application for placing on record documents Annexure R-10 to R-12 on behalf of respondent is allowed.

Registry to place the same at appropriate place.

Main case

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') assailing the order passed by the Additional District Judge, Panchkula dated 25.09.2023, declining to grant any injunction in favour of the appellant under section 9 of the Act.
2. It transpires that on 16.09.2020, the respondent floated a tender for appointment of Strategic Alliance Management Operator for the Inland Container Depot-cum-Container Freight Station, Rewari. The appellant applied



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for the said tender and was informed on 30.09.2020 that it was selected as a bidder. The appellant was asked to deposit a sum of Rs.30 lacs towards bank guarantee. An agreement was also signed between the parties on 11.11.2020. A communication was also issued on 02.12.2020 instructing the appellant to take over the facility at Rewari with effect from 31.12.2020. The intent was to allow the operations to be started from 01.01.2021. The appellant however did not start the operations allegedly on the ground that various codes were in the name of previous partner and were not available to be utilized by the present appellant.

3. Ultimately, the contract came to be cancelled by the respondent on the alleged plea of violation of the terms of agreement. It is thereafter that the application under section 9 of the Act came to be filed by the appellant, which has been rejected by the Court.

4. Various contentions have been advanced in support of the appeal, in order to state that there was no conscious violation of the terms of the contract by the appellant, and that it intended to continue with the contract itself. While entertaining the present appeal, following orders were passed on 28.09.2023:-

“The present appeal has been filed against the order dated 25.09.2023 passed by the Additional District & Sessions Judge, Panchkula whereby, the petition filed under Section 9 of the Arbitration & Conciliation Act, 1996, has been dismissed.

The reason which weighed with the Court was that the appellant was neither paying requisite fees nor vacating the premises and therefore, it was minting money by using facility of the Inland Container Depot-cum-Container Freight Station of the respondent-Corporation at Rewari without payment of requisite fees. The issue of the rail siding being not made operational in spite of letter written on 03.01.2023 by Hon’ble the Chief Minister of Haryana to Hon’ble the Minister of Railways, Government of India,



did not weigh with the Court, on the ground that there was an agreement dated 11.11.2020 (Annexure A-2) between the parties which was to be taken into account. Therefore, the Court has observed that in order to get the relief of injunction, the applicant has to prove co-existence of prime facie case, balance of convenience and likelihood of irreparable loss being caused to the applicant, if the injunction is not granted. Thus, the Court came to the conclusion that it was a large set up and merely because, the rail siding had not been made operational thus, it could not be made a basis of stoppage of payment

We have gone through the record and it would be apparent that a show cause notice was issued on 17.04.2023 (Annexure A-29), which showed an outstanding amount of Rs.2,53,79,708/- and the notice showed that the site had been visited before submitting tender on “as is where is basis”.

The reply filed on 30.05.2023 (Annexure A-30) showed that the 24 acres site had a rail line/siding, possession of which had been discontinued and there were outstanding from the CONCOR and restoration was not being done. A reference was also made to the letter written by Hon'ble the Chief Minister, Haryana, dated 03.01.2023 (Annexure A-23) regarding the fact that due to non-operation, importers/exporters of Haryana was being deprived of using this Government facility and action was sought to facilitate importers/exporters of the region as also for the convenience of residents of Rewari city by moving of goods shed to Anaj Mandi Station at ICD Rewari. The termination order was then passed on 22.06.2023 (Annexure P-31), wherein a sum of Rs.4,05,25,355/- was claimed including Quarterly Cost Recovery Charges payable to the Custom Department and on other accounts of variable costs, penalty etc. for the outstanding dues upto 30.05.2023. The appellant's representative submits that the monthly out lay as such is approximately Rs.10 lacs per month. It is not disputed that there is an arbitration clause and the Corporation, as such, has requested for appointment of an Arbitrator under clause 13 of the



agreement as per request dated 18.07.2023 (Annexure A38) which was declined on 21.07.2023 (Annexure A-39) with an offer that the Arbitrator should be appointed from this Court.

The petition under Section 9 had been filed on 06.07.2023 (Annexure A-35) before Court and an interim order was passed on 07.07.2023 (Annexure A-36) wherein the appellant was protected subject to certain conditions including the deposit of Rs.1 crore by 19.07.2023 and also for invoking the arbitration clause which as noticed above has not been accorded to. It is the case of the appellant that the sum of Rs.1 crore was deposited by way of demand drafts dated 04.07.2023 and 14.07.2023 while referring to Annexure A-38. It is also brought to our notice that the a petition under Section 11 of the Act had been filed before this Court but the same has not been listed on account of objections being raised by the office.

Notice of motion for 11.10.2023.

Keeping in view the above and the fact that it is brought to our notice that there are 400-500 containers lying at the venue and the value of goods is substantial about Rs. 500 crores and it is not possible to shift out such containers instantly. Then, we are of the opinion that prima facie a case is made out in favour of the appellant since arbitration proceedings are to be undertaken are the ambit of providing the interim relief would then be in the hands of the Arbitrator and the Corporation has not agreed to at this stage, to the proposed person.

Accordingly, we direct the appellant to produce a demand draft of Rs.50 lacs in favour of the Corporation on the next date of hearing and as undertaken, he will also pay an another sum of Rs.50 lacs after 05 weeks, thereafter and it is also continue to paying the monthly rent regularly, thereafter, so that he can utilize the facilities of the warehousing etc. which are attached alongwith the siding.

Resultantly, we direct that the possession of the appellant shall not be disturbed till the next date of hearing.



Needless to say that if the demand draft would not be produced on the next date of hearing, the stay shall automatically stand vacated.”

5. Application has been filed by the respondent to vacate the aforesaid interim order on the ground that even the terms of aforesaid interim order have not been complied with.

6. On the last date of hearing, the Court was informed that an Arbitrator has already been appointed under section 11 of the Act. Since the appellant was continuing with the contract under the interim orders of this Court, we thought it appropriate to pass following orders on 17.03.2026:-

“On joint request of learned counsel for the parties, adjourned to 30.04.2026.

In the meantime, it shall be open for the appellant to approach the Arbitrator for appropriate relief in terms of Section 17 of the Arbitration and Conciliation Act, 1996, which shall be dealt with on its own merits, without being influenced by the orders impugned or the order passed in present appeal.”

7. When the matter is taken up today, we are apprised that no application for interim injunction under section 17 of the Act has been filed before the Arbitrator. On behalf of the appellant, it is stated that there were unavoidable circumstances, on account of which the application could not be filed earlier, and that such application shall be filed positively within three days from today.

8. Mr. Aman Bahri, learned senior counsel for the respondent fairly states that the interim arrangement continuing under the previous orders of this Court can be allowed to be continued till the next date fixed before the Arbitrator, so that the application for interim injunction is considered in



accordance with law.

9. In that view of the matter, with the consent of counsels for the parties, we dispose of this appeal with the observation that the appellant shall be at liberty to file an application under section 17 of the Act for grant of interim injunction before the Arbitrator within three days from today. It shall be open for the respondent to file objection to such application by the next date fixed before the Arbitrator, i.e. 11.05.2026.

10. We request the learned Arbitrator to consider the interim injunction application as per his earliest convenience. Till the next date fixed in the matter, status quo as is continuing on date shall be allowed to continue with regard to performance to be undertaken by the appellant pursuant to the contract. We also provide that the learned Arbitrator will consider the application for grant of interim injunction without being influenced in any manner with the observations and findings contained in the order of the Additional District Judge, Panchkula dated 25.09.2023 or any observations made by this Court in the present case.

11. Appeal stands disposed of accordingly.

12. Pending applications, if any, shall stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

APRIL 30, 2026
mohit goyal

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