

2026:PHHC:079953



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

ARB-598-2025 (O&M)
Date of decision: 15.05.2026

M/s Lord Shiva Construction Company Pvt. Ltd.

....Applicant

Versus

State of Haryana and others

....Respondents

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

Present: Mr. Ankit Grewal, Advocate,
for the applicant.

Ms. Ruchi Sekhri, Addl. A.G., Haryana.

SHEEL NAGU, CHIEF JUSTICE(Oral)

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), seeks appointment of Arbitrator/Arbitrators.
2. Reply filed by respondent Nos. 1 to 5 perused.
3. The applicant was allotted the work vide letter of allotment dated 25.07.2018 and pursuant thereto, the parties entered into Agreement No. 19 of 2017-2018. The said agreement contains a dispute redressal and arbitration mechanism under Clauses 24.1 to 24.3 of the General

Conditions of Contract (GCC), which are reproduced hereunder: -

“24. Dispute Redressal System

24.1 *If any dispute or difference of any kind whatsoever shall arise in connection with or arising out of this contract or the execution of Works or maintenance of the Works there under, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred for settlement to the competent authority, described alongwith their powers in the contract data. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works is already in progress, the Contractor shall proceed with the execution of works, including Maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.*

24.2 *Either party will have the right of appeal, against the decision of the competent authority to arbitrator within a period of 28 days from decision of the competent authority. Either party may give notice to the other for refer a decision of the competent authority to an Arbitrator within 28 days of the Competent Authority written decision. If neither party refers the dispute to arbitration within the next 28 days, the Competent Authority decision will be final and binding.*

24.3 *The Arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.”*

3.1 In terms of Clause 24.3 of the GCC, the arbitration proceedings are governed by the arbitration procedure contained in Section 3 of the Special Conditions of Contract, reproduced hereunder: -

"ARBITRATION (GCC Clause 24.3)

(a) Every party will have the right to appeal against of the order of competent authority to the arbitral/tribunal, which will be settled in accordance with the Arbitration and Conciliation Act, 1996. In case the amount of work is less than Rs. 10.00 crores, the matter will be adjudicated by sole arbitrator otherwise by a tribunal of 3 arbitrators. The contractor while invoking arbitration the claimant shall deposit with Engineer a claim fee of @ 2% of the claim amount. On termination of the arbitrator proceedings, "this fee shall be adjusted in the cost, if any, awarded by the arbitrator (or arbitrator tribunal) against the claimant party and the balance remaining after such adjustment, and in the absence of such cost being awarded. The whole of the sum will be refunded within one month of the date of the award. In case of sole arbitrator, Engineer-in-Chief will appoint sole arbitrator from the list approved by the Govt. within 60 days from the receipt of application of the contractor. In case of arbitrator tribunal consisting of 3 arbitrators, one each to be appointed by the employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators

appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress.

(b) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Council, Indian Road Congress shall appoint the arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.

(c) Deleted

(d) Arbitration proceedings shall be held in Sonapat / Chandigarh, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(e) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as per fee structure available at next page. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.

(f) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject matter of the arbitration proceedings."

4 Dispute erupted between the parties. The applicant submitted claim-representations dated 06.06.2025 and

07.06.2025 to Superintending Engineer-cum-Employer, Sonapat Circle, PWD B&R, Sonapat Haryana (herein 'Respondent No. 4') seeking payment on account of losses allegedly suffered due to the illegal acts attributable to the employer. The Executive Engineer, Provincial Division No. 1, PWD B&R Br., Sonapat (herein 'Respondent No. 5') vide communication dated 30.06.2025 rejected the claims of the Applicant. The said claims were also declined by Respondent No. 4 vide letter dated 01.07.2025.

4.1 The Applicant while invoking Clause 24.1 of the Contract Agreement vide application dated 07.07.2025 approached DRS-cum-Competent Authority, namely Chief Engineer (Roads), Haryana PWD B&R Branch (herein 'Respondent No. 3') for adjudication of disputes. The Chief Engineer, however vide order dated 25.08.2025 rejected the claims of the Applicant.

4.2 The Applicant thereafter invoked Clause 24.3 vide letter dated 09.09.2025 and called upon the Engineer-in-Chief-cum-Appointing Authority (herein 'Respondent No. 2') to constitute the Arbitral Tribunal for adjudication of the disputes between the parties. In the said communication, the Applicant nominated Shri S.K. Kharab, Executive Director (Retired), from the panel of arbitrators approved by the Haryana PWD (B&R) Department, as its nominee arbitrator and further called upon the respondents to nominate their

arbitrator in accordance with the arbitration clause. However, no action was taken by the respondents.

5. Learned counsel for 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. The objection raised by the respondents, however, is that the applicant has failed to satisfy a mandatory condition precedent for invocation of arbitration expressly stipulated in the executed contract agreement, namely, deposit of 2% of the claim amount as a pre-deposit for invocation of the arbitration clause.

6. The law regarding the scope of examination under Section 11(6) of the Arbitration and Conciliation Act, 1996 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 non-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.

7. 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 under Section 11, 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.”

8. In the opinion of this Court, as the prerequisites for invoking powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 stand satisfied, the objections raised by the Respondent do not constitute a valid impediment to the exercise of this Court’s power to appoint an arbitrator.

9. Accordingly, this application is allowed.

9.1 Mr. Justice Rajesh Tandon, former Judge of Uttarakhand High Court, is hereby appointed as nominee Arbitrator of the respondents to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

10. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at her/his convenience.

11. The Arbitrator is appointed with the liberty to determine jurisdiction and rule on any objections including (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 the 1996 Act, as well as objection regarding requirement of

pre-arbitral deposit of 2% of the claim amount, which shall also be dealt with by the Arbitrator.

12. 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.

13. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.

14. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.

15. A request letter along with copy of this order be sent to Mr. Justice Rajesh Tandon, former Judge of Uttarakhand High Court.

(SHEELNAGU)
CHIEF JUSTICE

15.05.2026
Ajay Prasher

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