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

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**ARB-635-2024  
Date of Decision: 08.09.2025**

M/s Gaanesh Kartikey Construction Private Limited

.... Petitioner

Versus

Municipal Corporation, Amritsar through its Commissioner

..... Respondents

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

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

Mr. Sanjeev Soni, Advocate &  
Mr. Sarthak Soni, Advocate,  
Ms. Nisha Grover, Advocate  
for the respondent.

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**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') praying for appointment of an independent Sole Arbitrator to adjudicate the disputes which have arisen between the parties.

2. Mr. Dheeraj Mahajan, learned counsel for the petitioner submitted that it is a case where an agreement was executed between the petitioner and the respondent-Municipal Corporation, Amritsar for the purpose of construction and maintenance of Multiple Foot Over Bridge (FoBs), Sky Walk Plaza on circular road alongside Shaheedan Sahib Gurdwara in Amritsar City under 'Smart City Mission'. He further submitted that there is a valid agreement between the parties for the



aforesaid construction work which has been annexed with the present petition as Annexure P-1 and the same is signed by both the parties in which there is an Arbitration Clause incorporated under Clause 25, which is reproduced as under:-

*“25. That in case of any dispute between the parties, then the Commissioner of Municipal Corporation, Amritsar shall be the Sole Arbitrator to decide that dispute and his decision shall be final and binding upon both the parties.”*

3. Learned counsel for the petitioner also submitted that a dispute arose between the parties and vide Annexure P-2, a legal notice dated 08.11.2023 was issued by the petitioner by raising various concerns and issues and it was addressed to the Commissioner, Superintendent Engineer (Civil) and the Executive Engineer (Civil) [Engineer Incharge], Municipal Corporation, Amritsar for taking remedial measures for making good the losses. Thereafter, another legal notice was issued vide Annexure P-3 on 14.11.2023 on similar lines but no action was taken by the respondent-Corporation. Thereafter, the petitioner had issued a notice dated 07.11.2024 vide Annexure P-4 for invocation and for appointment of an Arbitrator in terms of the Clause of the Agreement pertaining to the arbitration but still no response was received from the respondent and in this way the mechanism so stated in the aforesaid Arbitration Clause has failed because of the inaction on the part of the respondent-Corporation and therefore, the present petition has been filed under Section 11(6) of the Act.

4. On the other hand, Mr. Sanjeev Soni, learned counsel for the respondent-Municipal Corporation has submitted that there is no dispute with regard to the Agreement (Annexure P-1) between the parties and it is



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also not in dispute that the agreement has been signed by both the parties and it was a valid agreement. He further submitted that there is no dispute with regard to existence of the aforesaid Clause 25 in the Agreement. However, the objection of the respondent in the present case is that in the bid document there was a clause pertaining to the dispute resolution mechanism wherein there is a clause pertaining to raising the dispute before the Engineer Incharge and if the Engineer Incharge does not adjudicate upon the same within a period of 60 days then the Arbitration Clause can be invoked. However, such a clause pertaining to pre-arbitral reference is not present in the final agreement which is at Annexure P-1, however, it is so mentioned in Clause 28 of the Agreement that all the conditions given in the RFP/Bid Document and Corrigendum will be part of this Contract. He submitted that since there was a pre-arbitration mechanism so provided for raising dispute before the Engineer Incharge, the same has not been resorted to by the petitioner and therefore, the Arbitrator may not be appointed in the present case.

5. To the aforesaid argument raised by the learned counsel for the respondent, it has been so submitted by learned counsel for the petitioner that firstly, at the time of reference stage under Section 11 of the Act, only a valid Arbitration Clause is to be considered by this Court and as per the Agreement, the aforesaid Arbitration Clause i.e. Clause 25 is the only arbitration clause, which is reproduced above and there is no pre-arbitration mechanism provided in the final agreement (Annexure P-1) and so far as the pre-arbitration mechanism so pointed out by learned counsel for the respondent is concerned, the same was only a part of bid document and not a part of the final agreement because at the time of executing the final

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agreement between the parties, the aforesaid clause was inserted in which there was no pre-arbitration mechanism clause at all. He further submitted that even otherwise also for the sake of argument, if the plea of learned counsel for the respondent is accepted, the same is also not tenable in view of the fact that even before invoking the Clause of Arbitration, the petitioner had issued a legal notice dated 08.11.2023 vide Annexure P-2 raising a dispute and for making good the losses to the petitioner but no action was taken by the Executive Engineer (Civil) [Engineer Incharge], Municipal Corporation, Amritsar, who was addressed the aforesaid legal notice and thereafter, a reminder was also sent vide Annexure P-3 dated 14.11.2023 and therefore, the argument raised by learned counsel for the respondent cannot be sustained because before invoking the Arbitration Clause, the petitioner had twice given the legal notice by giving adequate time for making good the losses by raising a dispute but when the same was not done, then vide Annexure P-4, a notice dated 07.11.2024 was issued for the purpose of invocation of the Arbitration Clause and therefore, any independent Sole Arbitrator may be appointed in the present case.

6. Learned counsel for the petitioner also submitted that as per Clause 25 of the aforesaid Agreement, the Sole Arbitrator who is to be appointed shall be the Commissioner of Municipal Corporation and in the present case the respondent is the Municipal Corporation itself and even otherwise also, the aforesaid Sole Arbitrator who is so incorporated in Clause 25 cannot be appointed as his appointment would be violative of Section 12 of the Act and would also be illegal and against the settled law that the Arbitrator cannot be appointed unilaterally. He submitted that any impartial and independent Arbitrator may be appointed by this Court.



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

8. The existence of an Arbitration Clause in the Agreement, which is signed by both the parties vide Annexure P-1 is not in dispute. As per the Clause, the Sole Arbitrator shall be the Commissioner, Municipal Corporation, who is certainly an interested party and therefore, he cannot be appointed as Sole Arbitrator being incapacitated and his appointment being unlawful. The only objection which has been raised by learned counsel for the respondent is pertaining to non-adoption of the pre-arbitration mechanism. A perusal of the Agreement (Annexure P-1) would show that no such mechanism has been provided in the Agreement which is the source of the Arbitration Clause and the same is incorporated in Annexure P-1. So far as the pre-arbitration mechanism which has been so referred to by the learned counsel for the respondent is concerned, the same is a part of the bid document only and not a part of the Agreement between the parties. So far as the reliance which is placed to Clause 28 of the Agreement (Annexure P-1) that the condition of the RFP/bid document which will be the part of the contract is concerned, the same also cannot be so considered at the time of reference stage under Section 11 of the Act particularly in view of the fact that a perusal of Annexures P-2 & P-3 would show that before invocation of the Arbitration Clause by the petitioner, he had sent two legal notices to the Executive Engineer (Civil) [Engineer Incharge], pertaining to making good the losses suffered by him but no action has been taken by the Engineer Incharge.

9. The law pertaining to the power of the High Court under Section 11 of the Act is now well settled by Hon'ble Supreme Court in "*SBI General Insurance Company Limited Vs. Krish Spinning*", 2024 SCC



*Online SC 1754* and also by the Seven Judges Bench of Hon'ble Supreme Court in "*Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*" (2024) 6 SCC 1. At the time of reference stage under Section 11 of the Act, the Court has to see the existence of a valid Arbitration Clause or Arbitration Agreement only. So far as the other aspect is concerned, the same can always be seen and considered by the Arbitral Tribunal. In the present case, it is undisputed that there is an Arbitration Clause i.e. Clause 25 of the Agreement (Annexure P-1) which provides that in case of any dispute between the parties, the Commissioner of Municipal Corporation, Amritsar shall be the Sole Arbitrator. So far as the competence of the Commissioner of Municipal Corporation, Amritsar, who is the respondent in the present case is concerned, the same cannot be appointed as Sole Arbitrator because of being interested party and therefore, he is incapacitated from being appointed as Sole Arbitrator. Therefore, it will be just and proper to appoint any independent and impartial Arbitrator in the present case.

10. In view of the above, the present petition is allowed. Mr. Justice (Retd.) Tejinder Singh Dhindsa, a former Judge of this Court, resident of House No.123, Sector-8, Chandigarh, Mobile No.07837049208, 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.

11. 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.

12. Learned Arbitrator is also requested to complete the



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proceedings as per the time limit prescribed under Section 29-A of the Arbitration Act.

13. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Tejinder Singh Dhindsa, a former Judge of this Court.

**08.09.2025**

*Bhumika*

**(JASGURPREET SINGH PURI)**  
**JUDGE**

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