

CR-1377-2025

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

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**CR-1377-2025  
DATE OF DECISION : 07.03.2025**

HARYANA STATE WAREHOUSING CORPORATION AND  
ANOTHER ...PETITIONERS

Versus

R.A GUPTA (GOVT. CONTRACTORS, BUILDERS & SUPPLIERS)  
...RESPONDENT

**CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI**

Present : Mr. Sanjeev Kaushik, Advocate and  
Mr. Devyanshu Kaushik, Advocate for the petitioners.

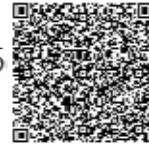
Mr. Wazir Singh, Advocate for the caveator/respondent.

**LAPITA BANERJI, J.(ORAL)**

Under challenge in this present civil revision is an order dated February 05, 2025 passed by the sole Arbitrator (Annexure P-1).

2. In an application filed by the petitioners under Section 16 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'), the learned Arbitrator held that the issue raised with regard to limitation and all other issues involved in case, were to be kept open and adjudicated upon after getting evidence of the parties at the time of final disposal of the arbitral proceedings. He held that the issue of limitation was a mixed question of fact and law and the application under Section 16 of the 1996 Act was disposed of in the aforesaid terms.

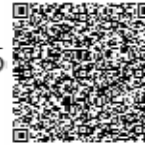
3. It was submitted by the Ld. counsel appearing for the petitioners herein, respondents/corporation in the arbitration proceedings



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(for convenience referred to as ‘the Corporation’) that the claims raised by the claimant-contractor were not arbitrable in nature and learned Arbitrator did not have the jurisdiction to adjudicate the dispute given the provisions of Section 16(2) of the 1996 Act. While appointing the learned Arbitrator under Section 11 of the 1996 Act, a Coordinate Bench of this Court clarified that the reference would be entered into by the sole Arbitrator after complying with all the conditions of the contract including the condition which dealt with the requirement of making a pre-deposit by the claimant-contractor. Several objections were raised by the corporation with regard to the claims raised by the claimant before the arbitral Tribunal. The said allegations raised by the corporation were disputed by the claimant by way of filing a detailed reply. The learned arbitral Tribunal dealt with the cases cited on behalf of the parties and came to the conclusion that the onus to prove that the claims were not arbitrable and beyond the jurisdiction of the arbitral Tribunal, lay with the corporation. The corporation had failed to show how any of the claims raised by the claimant were not arbitrable in nature. Only by making bold averments which completely lacked in proof, the corporation could not be permitted to contend that the claims were not arbitrable in nature.

4. The learned sole arbitrator held that Clause 5-A of the Contract was in the teeth of Section 28 of the Indian Contract Act, 1872. The claims were preferred by the claimant within a period of three years from the date on which, the cause of action arose and therefore, were within the period of limitation stipulated under the Limitation Act. Resultantly, he held that the claims were eligible of being adjudicated upon by the learned Arbitrator. He



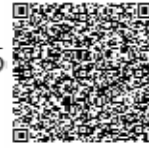
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relied on a decision of **Grasim Industries Limited Vs. State of Kerala** reported in (2018) 14 SCC 265 to hold that the correct position of law in respect of limitation was reflected therein.

5. The learned Arbitrator noted in detail that the work was completed by the contractor on June 30, 2015. The final payment was made to the claimant on February 14, 2017. Therefore, the contractor-claimant could have initiated the legal proceedings within three years from February 14, 2017. He held that since the claims were raised within a period of three years from the date of payment of final bill, he was eligible to consider the claims raised in the statement of claim.

6. The issue raised by the corporation in respect of limitation having expired for filing a petition under Section 11(6) of the 1996 Act, was rejected by the learned Arbitrator since vide a letter dated November 29, 2018, the corporation informed the claimant for the first time that no payment was due and pending to the claimant on that date. Therefore, the limitation had to be computed from the date of the receipt of letter dated November 29, 2018 when the claimant in fact realized that no further payment would be made by the corporation to the claimant. Learned Arbitrator concluded that the question of limitation was a mixed question of fact and law. Hence, the application under Section 16 was rejected and learned Arbitrator concluded that all the issues would be adjudicated after evidence was adduced by the parties.

7. Learned counsel appearing on behalf of the petitioners-corporation relies on the judgment of Supreme Court dated November 27,



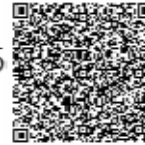
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2019 in Special Leave Petition (C) No.11476 of 2018 **M/s Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coal Field Limited.**

He draws attention of this Court to paragraph 9.12 to submit that the issue of limitation could not be raised by a party at the time of consideration of an application under Section 11 of the 1996 Act.

8. This Court cannot comprehend how the said decision is aiding the petitioner's case since in paragraph 10 of the said judgment, the Apex Court held that the issue of limitation cannot be raised at the time of decision in Section 11 application. The issue of limitation was held to be a jurisdictional issue and the same was directed to be decided by the arbitral Tribunal.

9. He relies on the judgment of **NTPC Vs. Siemens Atkein Geseel Schaft** reported in (2007) 4 SCC 451, wherein it was held that the learned arbitral Tribunal would decide the issue of limitation under Section 16 of the 1996 Act. If the Tribunal found that the claim is dead one or claim was barred by limitation then such issues would be barred on the ground of limitation not on merit and there would be no need to adjudicate on the merits. Under Section 16(5), the Tribunal was under the obligation to decide the said plea of jurisdiction. If the Tribunal rejected such plea, then the arbitral proceedings would continue culminating into passing of an award. If a party was aggrieved by such dismissal of Section 16 application, then the recourse would be to challenge the arbitral award under Section 34(6) of the 1996 Act.



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10. The Apex Court categorically held that if any party was aggrieved by a decision of the arbitral Tribunal under Section 16 of the 1996 Act, the correct approach would be to challenge the award under Section 34 of the 1996 Act. Such a remedy is statutory, provided under Section 16(6) of the 1996 Act. In such an event, this Court also fails to understand how the civil revision is maintainable from an order passed by the arbitral Tribunal under Section 16 of the 1996 Act.

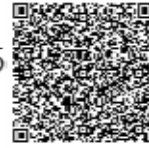
11. Relevant extract of Section 16 of the 1996 Act is reproduced hereunder:-

*(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

*(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.*

To the mind of this Court the present civil revision is statutorily barred under the 1996 Act.

12. Learned counsel further submits that in the present case, the learned sole arbitrator accepted the arguments raised on behalf of the claimant and kept the issue of limitation pending till the time of final decision and after taking of evidence. This Court fails to see how the learned Arbitrator misdirected himself or passed a perverse order by keeping the issue of limitation open and to be decided after adducing of evidence.



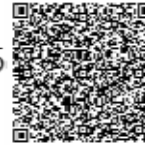
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13. He relied on the judgment dated April 02, 2013 passed by a Coordinate Bench of the Delhi High Court in OMP No.790 of 2012 **National Highways Authority of India Vs. Mecon-Gea Energy Systems India Ltd. JV** to submit that the provision of Section 16(2) of the 1996 Act has to be given meaning of widest amplitude. In the said judgment it was held that a Court hearing the application under Section 16 of the 1996 Act had the authority to hear all the facets of arbitrability or non-arbitrability of the issue while deciding whether the same fall within the scope or outside the scope of the agreement. All the claims which were non-arbitrable were either barred by law or fell outside the scope of arbitration proceedings.

14. The impugned order is a detailed one passed by the learned Arbitrator, where the question whether the claims were arbitrable or falling beyond the scope of the agreement or being barred under law, has been discussed before holding that he had the jurisdiction to continue with the arbitration.

15. The Hon'ble Apex Court in **M/s Mongia Realty and Buildwell Private Limited Vs. Manik Sethi** reported in (2022) 11 SCC 572 has reiterated that the determination of limitation is not a pure question of law and the same may be decided by the trial Court along with other issues in the trial. Therefore, no infirmity can be found in the learned Arbitrator's order to decide the said issue along with other issues involved in the arbitral proceedings.

16. In **Nusli Neville Wadia versus Ivory Properties & Ors.** reported in 2019 INSC 1138 in a three Judge Bench of the Apex Court held



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that if the issue of limitation was based on admitted facts it could be decided as a preliminary issue but if the facts surrounding the issue was disputed then it could not be decided as a preliminary issue. Therefore, the Ld. arbitrator neither misconducted himself nor passed a patently illegal order.

17. Accordingly, CR-1377-2025 is **dismissed**.

18. Connected application(s), if any, shall also stand disposed of.

**(LAPITA BANERJI)**  
**JUDGE**

**07.03.2025**

Prince

Whether speaking/reasoned :  
Whether reportable :

Yes/No  
Yes/No