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

ARB-293-2025

Date of decision: 24.09.2025

MBL INFRASTRUCTURE LTD.

...Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rohan Markanda, Advocate,
Mr. Rajesh Markanda, Advocate and
Mr. Arshdeep Singh, Advocate
for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana.

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') seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties pertaining to an agreement entered into between the parties regarding construction of 4 lane ROB on Rai-Nahra-Bahadurgarh road level crossing No.21 on Delhi Ambala Railway line in Sonapat District.

2. Learned counsel for the petitioner submitted that there is a valid agreement between the parties and there also exists valid arbitration clause i.e. Clause 25.2. He further submitted that as per the aforesaid Clause 25.2, if the



claim amount is more than Rs.10 crores, then the Arbitral Tribunal is to be constituted. He submitted that however, there is another Clause i.e. Clause 24.1, which provides for dispute redressal system that in case of any dispute, the issue shall be raised before the competent authority. He further submitted that the aforesaid pre-arbitration mechanism was duly followed by the petitioner vide Annexure P-2 dated 23.11.2024, which was the letter addressed to the Superintending Engineer and it was so mentioned in the last part of the aforesaid letter that this may be treated as a notice under Clause 24 and other provisions of the contract but no response was received by the petitioner with regard to the same and therefore, no order has been passed on the aforesaid. He further submitted that although the aforesaid order could have been challenged but no such order existed and since the pre-arbitration mechanism as so initiated by the petitioner was not responded to by the respondent, the petitioner was constrained to send a notice under Section 21 of the Act for invocation of the arbitration clause under Clause 24 and Clause 25 and still no response was received from the respondent and in this way, the mechanism has failed and therefore, the present petition has been filed under Section 11(6) of the Act seeking appointment of a Sole Arbitrator.

3. On the other hand, Mr. Chirag Wadhwa, DAG, Haryana submitted that there is no dispute with regard to existence of the arbitration clause and also the pre-arbitration mechanism. He has however submitted that the issue was first required to be decided by the competent authority and although there is nothing on the record to show that any such decision was taken, the petitioner has still invoked the arbitration clause under Section 21 of the Act. He further



submitted that there is a condition of pre-deposit of 2% of the claim amount as per Clause 25.2, but this issue can be taken up before the learned Arbitrator in view of the judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341**. He also submitted that the claim of the petitioner is also time barred and in view of the settled law the same can also be taken up at an appropriate stage before the learned Arbitrator.

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

5. So far as the aforesaid two arguments raised by the learned State counsel with regard to pre-deposit of 2% of the claim amount and the limitation of the claim are concerned, this Court is of the considered view that both these issues can be taken up before the learned Arbitrator at an appropriate stage in view of the settled law and especially the judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited's case (Supra)**. So far as adopting the pre-arbitration mechanism is concerned, the petitioner already raised the claim before the Superintending Engineer vide Annexure P-2 but the same was not responded to by the respondent and therefore, in default of the same, since there was no order of the competent authority, the arbitration clause was invoked and a notice under Section 21 of the Act was issued vide Annexure P-3 dated 21.03.2025 and therefore, the present petition filed under Section 11(6) of the Act would be maintainable.

6. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Mr. Justice K.S.Garewal, a former Judge of this Court, resident of 1065/1, Sector 39B, Chandigarh-160036, Mobile



No.9876002909, e-mail ID-kamal.garewal@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.

7. 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.

8. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

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

10. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice K.S.Garewal, a former Judge of this Court.

24.09.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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