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

**ARB-61-2025 (O&M)  
Date of decision: 13.08.2025**

**M/S R. K. JAIN INFRA PROJECTS PVT. LTD.**

**...Petitioner(s)**

**VERSUS**

**STATE OF HARYANA AND OTHERS**

**...Respondent(s)**

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

Present:- Mr. Gaurav Arora, Advocate  
for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. The present petition has been filed under Section 11 (4, 5, 6 and 8) 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 constructing R.C.C. retaining wall in inner side of West Jua Drain from RD 4150 to 34000 for Northern bye-pass of Bahadurgarh City (Phase-I).

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 23.9, whereby in the event of any dispute, an Arbitral Tribunal consisting of three Arbitrators is to be constituted, one to be appointed by the



employer after taking approval from Engineer-in-Chief and one by the contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by both the parties to act as Presiding Arbitrator. He further submitted that since a dispute arose between the parties after the completion of the work, the petitioner issued a legal notice dated 30.11.2024 (Annexure P-8) under Section 11 of the Act for appointment of a Sole Arbitrator as the procedure prescribed in the arbitration clause was not followed and the respondents failed to adhere to the aforesaid procedure. He further submitted that to the aforesaid legal notice, a reply was filed by the respondents vide Annexure R-4 dated 09.01.2025, vide which they have declined the request.

3. Learned counsel for the petitioner further submitted that there exists a valid arbitration clause between the parties as aforesaid i.e. Clause 23.9 and the reason for not appointing any Arbitrator was that firstly, as per Clause 23.2, the claim was to be made by the petitioner to the competent authority within a period of 120 days from the completion of the work, which was completed on 13.12.2023 and secondly, there was a pre-deposit condition requiring the petitioner to deposit of 2% of the claim amount for the purpose of invoking the arbitration clause. He further submitted that so far as the first aspect is concerned, it is a settled law that at the time of reference by this Court under Section 11 of the Act, the limitation period pertaining to the claim is not to be considered but it can always be considered by the learned Arbitrator as to whether the claim was time barred or not and so far as the second aspect is concerned, Hon'ble Supreme Court dealt with this issue in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4**



SCC 341, wherein it was held that such kind of condition is unconscionable, especially when the respondent is a State and it is also not in consonance with Article 14 of the Constitution of India and therefore, the aforesaid clause can always be ignored. He also submitted that in any case, liberty can always be granted to the respondents to raise all the disputes before the learned Arbitrator as per the law laid down by Hon'ble Supreme Court.

4. On the other hand, Mr. Chirag Wadhwa, DAG, Haryana submitted on instructions from the Executive Engineer, who is present in the Court that the State has no objection in case any independent Sole Arbitrator is appointed by this Court but the objection is only with regard to the aforesaid stipulated 2% pre-deposit amount and the claim being time barred beyond the prescribed period of 120 days. He further submitted that subject to the aforesaid two conditions, any independent Sole Arbitrator may be appointed by this Court. He also submitted that there is no dispute with regard to the existence and validity of the aforesaid arbitration clause i.e. Clause 23.9.

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

6. Only two objections have been raised by the State in the present case. The first objection was with regard to pre-deposit of 2% of the claim amount. Hon'ble Supreme Court in Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited (Supra) held that when there is an inequality in the bargaining power, then such kind of condition is unconscionable and it also violates the Right to Equality under Article 14 of the Constitution of India and therefore, at the time of reference under Section 11 of the Act, the aforesaid condition can always be ignored in the facts and



circumstances of each and every case. In the present case, the respondent is the State of Haryana and there was a condition of pre-deposit of 2% of the claim amount. Learned counsel for the petitioner has also made a categorical submission that the aforesaid issue of pre-deposit of 2% of the claim amount can always be considered by the learned Arbitrator, at any stage, especially at the time of final adjudication including adjustments and costs etc. Therefore, this Court is of the considered view that the aforesaid objection cannot become a bar for appointment of an independent Arbitrator under Section 11 of the Act. So far as the second objection raised by the State with regard to the claim being time barred is concerned, the same also cannot be considered at the time of reference under Section 11 of the Act in view of the judgment passed by Hon'ble Supreme Court in *SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754.*

7. Needless to say that the aforesaid aspects i.e. with regard to pre-deposit of 2% of the claim amount and the claim being time barred can always be raised by the respondents before the learned Arbitrator, at an appropriate stage, which shall thereafter be considered by the learned Arbitrator, in accordance with law.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Mr. Justice (Retd.) B. S. Walia, a former Judge of this Court, resident of #1143, Sector, 8-C, Chandigarh-160009, Mobile No.9814006691, e-mail ID-waliabs@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.



9. 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.

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

11. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice (Retd.) B. S. Walia, a former Judge of this Court.

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

**13.08.2025**  
Chetan Thakur

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