

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.162 of 2014 (O&M)
DATE OF DECISION: 08.05.2015

M/s Brij Gopal Construction Company Private Limited
....Applicants
versus

M/s Haryana State Industrial & Infrastructure Development
Corporation Ltd.
.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Suvir Kumar, Advocate for the applicants
Mr. R.S. Sihag, Advocate for the respondent
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S.J. VAZIFDAR, ACTING CHIEF JUSTICE: (Oral)

This is an application under Section 11(6) of the
Arbitration and Conciliation Act, 1996.

2. The agreement is admitted. That the agreement
contains an arbitration clause is also admitted. The only
contention is that there is accord and satisfaction and that
the claim is barred by limitation.

3. By a notice dated 25.11.2010, the applicants
demanded payment of an aggregate amount of Rs.4.65 crores
which included a claim on account of the final bill, refund of
security, escalation, damages and interest. Merely because the
applicant stated in the beginning of the letter that the
amount in the final bill was Rs.1.25 crores, it cannot be said
that there was accord and satisfaction. It is difficult to
accept the submission on behalf of the respondent. The very

same letter raises other claims as well. It is then contended that the amount of Rs.1.25 crores was paid. The final bill was paid along with additional amount. At the foot of the receipt, the particulars of the cheque are mentioned. The last but two words are "issued in". It is not clear whether the last part of the receipt merely contains the alphabets "H" or "S" or "h/o". Even assuming that the receipt states that the amount is received in full and final satisfaction, in the facts and circumstances of this case, it would be necessary to consider whether the applicants accepted the same under protest or not. This is not an open and shut case of accord and satisfaction.

3. The question of limitation is also not open and shut. The alleged final payment was made on 24.2.2011. The security deposited was refunded on 24.3.2011. The applicant initiated the arbitration proceedings by its notice dated 11.3.2014. If the applicant's case in this regard is correct, the bar of limitation, if any, may be saved. This again is a matter for the Arbitrator to decide.

4. The arbitration clause provides for a tribunal of three learned Arbitrators. The parties, however, state that with a view to saving costs and time, the reference be made only to a sole Arbitrator. This, however, would be without prejudice to the respondents' contention that an Arbitrator ought not to be appointed at all.

Clause 5.9.2 of the agreement reads as under:-

"5.9.2 In cases not covered by the above clause, the Arbitral Tribunal shall consist of a

panel of three serving or retired officers of HUDA/Haryana PWD B&R as the Arbitrators.

The demand for Arbitration is subject to Arbitration and Conciliation Act, 1996 and the rules there under and any statutory modification thereof shall apply to the arbitration proceedings under this clause."

The respondents have refused to constitute the panel even as on date. They have, therefore, forfeited their right to appoint the Arbitrator.

5. The petition is, therefore, disposed of by appointing Justice Mukul Mudgal, former Chief Justice of this Court, #A-1, Nizammudin East, New Delhi, as the sole Arbitrator.

08.05.2015
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(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE