

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARBITRATION CASE No.19 of 2015 (O&M)
DATE OF DECISION: 15.05.2015

M/s Bansal BuildersApplicants
versus
State of Haryana and othersRespondent

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

Present: Mr. Vishal Gupta, Advocate for the applicants
Ms. Mamta Singla Talawar, AAG, Haryana
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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, for appointment of an Arbitrator in accordance with Clause 25-A of the agreement.

2. The parties had entered into a construction contract. The agreement is admitted. That the agreement contains an arbitration clause is also admitted.

3. By a letter dated 27.12.2011, the applicants demanded the release of the security deposit in the sum of Rs.24.83 lacs and payment for works amounting to Rs.54,07,642/-. These amounts have been paid. The applicants, however, state that the amount of Rs.54,07,642/- pertained only to the 14th and 15th running bills and not to the subsequent running bills viz. 15th and 16th bills. The respondents state that there were only 15 running bills. The 16th running bill is fictitious and fraudulent. It will be necessary to construe the letter dated 27.12.2011 *inter alia*

to ascertain whether the amounts claimed therein were the only amounts due and payable by the respondents to the applicants. In other words, according to applicants, the amounts due pertained only to the 14th running bill. It is necessary, therefore, to determine whether any amounts other than the same are due and payable.

4. The respondents relied upon sub-clause 9 of Clause 25-A which provides that neither party shall be entitled to bring a claim for arbitration if the appointment of such arbitrator has not been sought within six months of the period stipulated therein. The respondents have relied upon sub-clause 9(a) under which the period of six months is to be calculated from the date of completion of work as certified by the Executive Engineer-in-charge. The work was completed in or about the year 2008. Clause (e) of sub clause-9 of clause 25-A provides that the period of six months is to be calculated from the date of receiving an intimation from the Executive Engineer-in-charge of the work that final payment due to or recovery from the contractor had been determined which he may acknowledge and/or receive.

5. This is not an open and shut case of accord and satisfaction or of the claims being stale or dead and barred by limitation.

6. The disputes are to be referred to the sole arbitration of any serving Superintending Engineer or Chief

Engineer of Haryana PWD, B&R Branch, to be nominated by designation by the Engineer-in-Chief at the relevant time.

7. The application is, therefore, disposed of by directing the respondents to appoint an Arbitrator in accordance with Clause 25-A(2) by 30th June, 2015.

15.05.2015
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(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE