

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

ARB-197-2014 (O&M)

Date of decision:- 03.07.2015

M/s Satinder Mahajan

...Applicant

Versus

Union of India and others

...Respondents

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

Present: Mr. Raman Goklaney, Advocate,
for the applicant.

Mr. Karminder Singh, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

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

2. That the parties entered into an agreement and the agreement contains a column for arbitration is admitted.

3. The first defence is that the disputes and differences between the parties stood settled by virtue of a letter dated 27.05.2011. Reliance was placed on the last paragraph of the letter which reads as under:-

“However, in view of the above the best course of action shall be to foreclose the contract under clause 13 of the contract. It is also undertaken that we shall not claim any compensation/damages except what is admissible to us as per the contract in case our contract is foreclosed. We also undertake that in that event we shall also not invoke clause 25 of the agreement against the department. However, we may also be paid at contract rate for the work done at the site and our performance guarantee, earnest money and amount withheld on account of non achievement of milestones etc. should also be

released at the earliest. Payment under clause 10 C shall also be made to us.”

4. This is not a clear case of accord and satisfaction. One of the questions that would arise is whether the proposal was a composite one or not. Admittedly, there was a dispute as to whether the applicant has been paid the amount as demanded in the letter. These issues, therefore, must be left to the decision of the arbitrator.

5. The question of limitation is also not an open and shut one. The respondents' case is that the scheduled date for completion of the work was 09.07.2010; that the work was not completed and, therefore, the period of limitation expired on 09.07.2013. This is a construction contract. The evidence is voluminous. It would be necessary on merits to consider whether the time for completion was extended impliedly or expressly. The notice invoking the arbitration was issued on 12.06.2014. This is also an issue, therefore, that must be left to the decision of the arbitrator.

6. The petition is disposed of by directing the respondents to appoint an arbitrator in accordance with clause 25 (iii) by 31.07.2015 failing which it will be open to the applicant to make an application in this application itself for having an arbitrator named by this Court.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

03.07.2015
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