IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 209 of 2014
Date of Decision: 24.04.2015

Ansal Properties & Infrastructure Ltd. ..Petitioner

Versus

Vinod Chawla and others ..Respondents

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

Present : Mr. Vaibhav Narang, Advocate, for the petitioner.

Mr. Vikas Behl, Sr. Advocate with
Ms. Samaya Singh, Advocate, for the respondents.

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S.J.VAZIFDAR A.C.J. (Oral)

This is an application filed under section 11(6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator in view of the following arbitration clause:-

*"**17. Arbitration:-***

That in the event of any dispute arising between the parties relating to this agreement or any part thereof the same shall be referred to the arbitration of a sole arbitrator appointed by both the parties. Upon the parties failing to agree to the appointment of a sole arbitrator the same shall be referred to the arbitration of two arbitrators one to be appointed by each of the parties hereto and the arbitrators so appointed shall appoint and Umpire before entering upon reference who shall act as the Presiding Officer. The arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The venue of Arbitration shall be at Jalandhar or Chandigarh."

2. The parties entered into a collaboration agreement dated 06.12.2004. The respondents are the owners of the property and the

respondent is the developer under the agreement. Clause 3(b) of the agreement reads as under:-

3. **PERMISSIONS, LICENCES, APPROVALS ETC:-**

xx xx xx xx

(b) *The owner shall obtain the permissions as envisaged in this agreement within a period of 9 months from the date of signing hereof, and on receipt of building plans from the developers whichever is later however if the Owners are unable to get the permissions then the developer shall be entitled to get the permissions from the authority at the cost and expense of the Owners on their own. In case if the permissions are not obtained either by the Owners or by the Developers because of any reason whatsoever within a period of 24 months then this agreement shall come to an end and the payments received by the Owners shall be refunded to the Developers without any interest.*"

3. The application is liable to be rejected on the ground that the claim is not alive and is ex-facie dead. In view of the judgment of the Supreme Court in ***Indian Oil Corporation Ltd. v. M/s SPS Engineering Ltd. 2011(3) SCC 507,*** a party is not entitled to invoke the arbitration clause as a matter of right where the claim is ex-facie dead.

4. Admittedly, the period of two years stipulated in clause 3(b) expired on 06.12.2006. The conditions contained therein were not complied with. The matter, however, does not end here. The respondents by a letter dated 25.10.2005 stated that they were facing litigation and therefore, they would not be able to continue with the agreement. This constitutes a refusal to perform the agreement. The petitioners by their letter dated 04.11.2005 stated that they were willing to wait for a favourable settlement of the disputes. They further stated that as they had invested in the project it would be wise to continue with the originally planned development. Ultimately, the respondents by their letter dated

25.08.2006 returned a cheque for a sum of ₹ 5,00,000/- paid by the petitioner under the development agreement and stated as under:-

> *"As you know the problems that we are facing in front of the site. We don't think this will be a wishful step to develop this kind of land for a commercial purpose. Infact it will not be viable for you also to get the Better yield of profits. And due to these unavoidable circumstances and after taking full review of Jalandhar we are forced to take this kind of harsh decision which is unfortunate for both of us. Looking forward to further relations."*

5. The letter dated 25.08.2006 was clearly a refusal to perform the agreement. Even assuming that clause 3(b) does not apply and that there is no period for performance specified in the development agreement, the period of limitation would expire within three years of the petitioners knowledge of the respondents refusal to perform the agreement. The refusal to perform the agreement was in the first instance by the letter dated 25.10.2005 and then by letter dated 25.08.2006.

6. The petitioners, however, sought to invoke the arbitration agreement only by their letter dated 23.03.2013 i.e. well after the period of limitation. There is nothing on the record that saves the bar of limitation.

7. It was contended that the said cheque forwarded by the respondents to the petitioners for payment was not encashed. That makes no difference to the question of limitation which expired at the latest, three years after the date of knowledge of the refusal of performance.

8. In the circumstances, the application is dismissed.

9. The learned counsel appearing on behalf of the respondents agrees to refund the amount of ₹ 5 lacs without prejudice to the rights and contentions and subject to the petitioners' agreeing to the termination of

the agreement. In the event of the petitioners' agreeing to the termination of the agreement in writing, the respondents shall return the amount of ₹ 5 lacs within four weeks of the request of the same in writing.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

24.04.2015
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