

**ARB-166-2019(O&M)
Date of decision: 29.11.2019**

M/S GENETIC CONSTRUCTION PVT. LTD.

...PETITIONER

VERSUS

**KRISHILOK CO-OPERATIVE GROUP HOUSING
SOCIETY LTD.**

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajveer Singh, Advocate
for the applicant.

Mr. Aashish Chopra, Advocate
for the respondent.

DEEPAK SIBAL,J. (ORAL)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short-the Act) for appointment of an Arbitrator in a domestic commercial dispute.

The petitioner and the respondent entered into an agreement dated 24.05.2004 for construction of 50 Dwelling Units (stilt+5) on Plot No. GH-3, Sector 45, Faridabad, Haryana. Clause 37 of the agreement which contains the arbitration clause reads as under:-

All disputes and differences of any kind what ever arising out of or in connection with the Contract or the carrying out of works (whether during the progress of the works or after their completion and whether before or after the determination abandonment or breach of the Contract) shall be referred to and settled by the Architects/Society who shall state their decision in writing. Such decision may be in the form of a final

certificate or otherwise. The decision of the Architects/Society with respect to any of the excepted matter shall be final and without Appeal as stated in clause No.35. But if either the Society or the Contractor be dissatisfied with the decision of the Architects/Society or any matter question or the dispute of any kind (except any of the excepted matters) or as to with holding by the Architects/Society of any certificate to which the Contractor may claim to be entitled, then and in any such case either party (the Society or the Contractors) may within 28 days after receiving notice to such decision give a written notice to the other party through the Architects/Society requiring that such matters in dispute be arbitrated upon. Such written notice shall specify the matters which are in dispute and such dispute of difference of which such written notice has been given and no other shall be and is hereby referred to the arbitration and final decision of a single Arbitrator being Fellow of the Indian Institute of Architects/Society to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single arbitrator, to the arbitration of two Arbitrators being both fellows of the Indian Institute of Architects/Society one to be appointed by each party, which Arbitrators shall before taking upon themselves the burden of reference appoint an Umpire.

The Arbitrator, the Arbitrators or the Umpire shall have power to open up, review and revise any certificate, opinion, requisition or notice, save regard to the excepted matters referred to in Clause No.35 and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid.

Upon every or any such reference the cost of and incidental to the Reference and Award respectively shall

be in the direction of the Arbitrator or 'Arbitrators' or the Umpire who may determine the amount thereof, or direct the same to do taxed as between Attorney and Client or as between party and shall direct by whom and to whom and in what manner the same shall be borne and paid. The submission shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration Act, 1940 or any statutory modification thereof. The award of the Arbitrator or Arbitrators or the Umpire shall be final and binding on the parties. Such Reference except as to the withholding by the Architects/Society of any Certificates under Clause 32 to which the Contractor claims to be entitled shall not be opened or entered upon until after the completion or alleged completion of the works or until after the practical cessation of the works arising from any cause unless with written consent of Society and the Contractor. Provided always that the Society shall not withhold the payment of the Interim Certificate nor the Contractor except with the consent in writing of the Architects/Society in any way delay the carrying out of the works by reason of any such matter, question or dispute referred to Arbitration but shall proceed with the work with all due diligence and shall until the decision of the Arbitrator or Arbitrators or the Umpire be given abide by the decision of the Architects/Society and no award of the Arbitrator or Arbitrators or the Umpire shall relieve the Contractor of the obligation to adhere strictly to the Architects/Society Instructions with regard to the Actual carrying out of the work. The Society and the Contractor hereby also agree that Arbitration under this clause shall be condition precedent to any right or Action under the Contract.

On disputes having arisen between the parties, in terms of the afore-quoted clause of the agreement, the petitioner wrote a letter to the respondent for appointment of an Arbitrator. The respondent did not respond to the said letter

occasioning the filing of the present petition.

To adjudicate upon the disputes between the parties, through order dated 30.03.2011, passed in Arbitration Petition 71 of 2008, Sh. M.K. Bansal, District and Sessions Judge (Retired) was appointed as the Sole Arbitrator. While the matter was pending before Sh. M.K. Bansal he unfortunately expired on 17.10.2018. It is in these circumstances that the present petition has been filed for the aforesaid relief.

After hearing learned counsel for the parties, to finally adjudicate upon the disputes between them, Justice M.S. Sullar, (Retired) is appointed as the Sole Arbitrator in place of Sh. M.K. Bansal. Such appointment would be subject to the declaration to be made by Justice M.S. Sullar, (Retired) under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

The newly appointed Arbitrator shall continue the proceedings from the stage that they were when Sh. M.K. Bansal expired.

The Arbitrator is requested to complete the proceedings within the time frame specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with Fourth Schedule of the Act, as amended.

A copy of this order be forwarded to Justice M.S. Sullar, (Retired) at the given address:

House No. 220, Sector 25, Panchkula, Haryana.

Learned counsel for the parties have agreed that for the sake of convenience of their respective clients as also of the Arbitrator, Panchkula shall be treated as the venue for the arbitration.

After seeking the convenience of the Arbitrator, the parties are

directed to appear before the Arbitrator on 14.12.2019 at 11.00 AM or any other

date suitable to all concerned.

Learned counsel for the parties inform the Court that the record pertaining to the proceedings undertaken by Sh. M.K. Bansal are lying at his residence and that one of his legal heirs is Ms. Charu Gupta, who is a practising Advocate in Delhi/Gurugram Courts. In view of the above, Ms. Charu Gupta, Advocate is requested to seal the record pertaining to the arbitration which was being conducted by her father and on or before 14.12.2019 personally deliver the same to Justice M.S. Sullar (Retired) on the given address. Towards expenses to be incurred by Ms. Charu Gupta she shall be paid Rs. 20,000/- which shall be equally shared by both the parties.

Learned counsel for the parties undertake to serve a copy of this order upon Ms. Charu Gupta for compliance.

The matter is disposed of in the above terms.

29.11.2019
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(DEEPAK SIBAL)
JUDGE

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