

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

Date of Decision:24.02.2020

I ARB No.330 of 2019

**M/S BHULLAR CONSTRUCTIONS, ENGINEERS &
CONTRACTORS**

...Applicant

Versus

UNION OF INDIA AND ANOTHER

...Respondents

II ARB No.331 of 2019

**M/S BHULLAR CONSTRUCTIONS, ENGINEERS &
CONTRACTORS**

...Applicant

Versus

UNION OF INDIA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. P.S.Rana, Advocate
for the applicants.

Mr. Nitin Kumar, Advocate
for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present order shall dispose of two applications being
ARB-330-2019-M/s Bhullar Constructions, Engineers and Contractors vs.
Union of India and another and ARB No.331-2019-M/s Bhullar
Constructions, Engineers and Contractors vs. Union of India and another.

However, for the sake of convenience, facts have been taken from ARB-330-2019.

The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short-the Act) for appointment of an Arbitrator.

Through work order dated 05.02.2016 the respondents allotted to the applicant the work with regard to construction of 03 No. limited height subway on Hussainpur-Sultanpur Lodhi section of Ferozepur Division. On 18.03.2016 the parties entered into an agreement in this regard which contained clause 64 as per which disputes between the parties were to be settled through the mode of arbitration.

Disputes having arisen between the parties, the applicant through its notice dated 15.07.2019, invoked the arbitration clause and required the respondents to appoint an Arbitrator. Such request of the applicant was rejected by the respondents through their response dated 31.10.2019 as according to them, in view of the settlement arrived at between the parties, no cause subsisted.

In the above background the present application has been filed for the aforesaid relief.

In response to the present application the respondents have filed a reply through which they have sought dismissal of the present application on the ground that before filing of the application the claims of the applicant already stood settled and therefore no cause subsisted to appoint an Arbitrator.

In the light of the law declared by the Supreme Court in “M/s

Mayavati Trading Pvt. Ltd. vs. Pradyut Deb Burman”-AIR 2019 SC 4284, the above objection of the respondents requires to be overruled. The relevant observations of the Supreme Court in this regard are as follows:-

“This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra)”.

In view of the above, leaving it open for the parties to raise all their claims/defences/counter claims before the Arbitrator, in both the applications, Justice K.S.Grewal, a former judge of this Court is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Justice K.S. Grewal under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

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

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.

As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients as also of the Arbitrator, the venue of the Arbitration shall be at Chandigarh.

A copy of the this order be forwarded to Justice K.S. Grewal at the given address:

H.No. 1065/1, Sector-39-B,
Chandigarh.
Mob.9876002909

After seeking the convenience of the Arbitrator, the parties are directed to appear before him on 20.03.2020 or on any other date suitable to all concerned.

Both the applications being ARB-330-2019-M/s Bhullar Constructions, Engineers and Contractors vs. Union of India and another and ARB No.331-2019-M/s Bhullar Constructions, Engineers and Contractors vs. Union of India and another are disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

February 24, 2020

Jyoti-1 Whether speaking/reasoned Yes/No Whether Reportable Yes/No