

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

ARB 147 of 2020 (O&M)

Date of Decision: February 11, 2021

AVA Design Build Private Ltd.

...Petitioner

Versus

Orris Infrastructure Private Ltd.

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. A.K. Soni, Advocate
for the petitioner.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of lockdown due to outbreak of pandemic COVID-19.

The petitioner AVA Design Build Private Limited (in short, **'the petitioner'**) has come up in this petition under Section 11 of the Arbitration and conciliation Act, 1996 (in short, **'the Act'**) seeking appointment of a Sole Arbitrator for settlement of their disputes/differences arising out of work order

dated 1st May, 2016 (Annexure P-1) so executed between the petitioner and the respondent-Orris Infrastructure Private Limited (in short, '**the respondent**').

The claim of the petitioner is based on the grounds that it is a registered company and had been dealing in executing finishing, interiors and facade work etc. regarding which the respondent approached them and in pursuance of the settlement made between two sides work order dated 1st May 2016 (Annexure P-1) was issued and contract was awarded to the petitioner, wherein, terms and conditions were spelled out. It is during the course of time, a dispute arose between the petitioner and the respondent. Clause 16 of the work order (Annexure P-1) reads as under:-

16) Settlement of Disputes by Arbitration:- All the disputes and differences arising out of or touching the scope of this work order shall be resolved through mutual discussions and dialogue between the parties failing which the same shall be referred

to the Sole Arbitrator to be appointed by honourable Court. The Award of the Arbitrator shall be final and binding upon the parties. The Court at Gurgaon and Hon'ble Punjab and Haryana High Court at Chandigarh alone shall have the jurisdiction.”

In the light of the same, the present petition has been filed.

Due notice of the petition was given to the respondent but in spite of notice respondent did not put in appearance.

Heard Mr. A.K. Soni, Advocate for the petitioner and perused the records.

The agreement between the petitioner and respondent enlist that in case of any dispute/differences arising out of the scope of the work detailed therein shall be resolved through mutual discussions and dialogue between the parties failing which the same shall be referred to the Sole Arbitrator besides others to be appointed by this Court as well.

There is specific averment made in the petition that respondent did not abide by the terms of the work order and conditions laid therein and even did not pay an amount of Rs.32,06,136/- and, thus, the petitioner was entitled to recover the same including interest @ 18% per annum. Since in spite of repeated reminders, the respondent has failed to make the payment, i.e. the total consideration of Rs.2,40,00,000/- inclusive of taxes as applicable to the tune of Rs. 2,76,96,000/-.

The petitioner has placed on record the reminders/e-mails dated 16.07.2018 and 23.07.2018 (Annexure P-2 and P-3) respectively to *prima facie* establish that in spite of numerous requests by the petitioner, the respondent has failed to respond to its requests and which is further strengthened from the statement of account (Annexure P-4). The response of the respondent is borne out from e-mail whereby the respondent owes to the petitioner approximately amount of Rs.14,00,000/- to 15,00,000/-, which is well detailed in Annexure P-5 (Colly.)

Furthermore, the copy of certificates deposits detailed in

Annexure P-7 (Colly.) and the correspondence so undertaken between the parties by way of Annexures P-8 and P-9 and notice with reply Annexure P-10 (Colly.) clearly substantiates the claim of the petitioner as to existence of a dispute between the petitioner and the respondent over the contract so executed between them by way of work order dated 1st May, 2016 (Annexure P-1).

In the light of the work order 1st May, 2016 (Annexure P-1) provides by way of Clause 16 that in such an eventuality of non-response to the notice (Annexure P-11) and request of the petitioner for mutual agreeing the appointment of an Arbitrator (Annexure P-12) are suggestive that the respondents are insolent to the request of the petitioner. From studied silence even to the notice of this Court and not responding to the petition further is suggestive of this conduct, this Court in view the undisplaced and unrebutted stand of the petitioner and the documents placed on the record does not feel it necessary to call for the evidence and is satisfied over the

claim of the petitioner that a dispute exists between the parties and in terms of work order provision of Arbitration has been provided and, therefore, this Court in exercise of its powers under Section 11(3A) of the Act appoint from the list of approved Arbitrators so made in the Chandigarh Arbitration Centre (CAC) Rules, 2018, Shri Anant Kumar Dhul, former IPS detailed at serial No. 43 of the list of Arbitrators from former Civil Servants/Architects/Engineers etc. as the Sole Arbitrator.

The petitioner shall make compliance of fee schedule enumerated in Fourth Schedule under Section 11(3A) of the Act and ensure that amount by way of initial one time fees be deposited with the Arbitrator and provide with him all documents who will issue notice to the other side and commence arbitral proceedings in accordance with law and the rules.

In case the respondent side appears in the Arbitration proceedings, then both the parties shall be bearing expenses of arbitration proportionately.

The petitioner shall be under obligation to provide all necessary documents of arbitral proceedings.

In the light of foregoing discussion, the matter stands disposed off. Office to comply.

February 11, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

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