

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

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ARB No. 316 of 2018 (O&M)
Date of Decision: 18.11.2022

RAJESH KUMAR BATRA

.....Petitioner

Vs

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND ORS

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Shubham Kashyap, Advocate for
Mr.Sandeep Singal, Advocate
for the petitioner.

Mr.Prateek Mahajan, Advocate with
Ms.Pruna Malhotra, Advocate and
Mr.Daanish Mahajan, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The present petition has been filed under Section 11
(4) of the Arbitration and Conciliation Act, 1996 (for short “the
Act”) for appointment of an Arbitrator to adjudicate the dispute
between the parties arising out of the contract agreement.

The petitioner is the sole proprietor of construction
company and had undertaken the work assignment of

construction of road, water supply and sewerage system at multi storey office complex at Bahadurgarh. The agreement was executed on 04.03.2014 and the work was to be completed within a period of six months.

As per the arbitration clause No. 25-A of the agreement, in case of dispute, the matter has to be referred to the arbitration of MD/Chief Engineer of HVPNL or his nominee not below the rank of Superintending Engineer subject to other conditions.

Learned counsel for the respondents has raised two fold objections. Firstly, that the work was completed on 10.06.2014 and as per sub clause 10 of the Arbitration Clause No. 25-A, the claim for arbitration should have been made within a period of six months from the date of completion. Secondly, the claim has been made on 08.12.2016 i.e. after a period of 2½ years and that too is without there being any justified reason.

Perusal of the arbitration clause No. 25-A would show that there is no ceiling provided in terms of Section 26 of the Amending Act of 2015, which reads as under:-

*“26. Act not to apply to pending arbitral proceedings-
Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to*

arbitral proceedings commenced on or after the date of commencement of this Act.”

Perusal of the aforesaid Section would indicate that nothing contained in the amending Act shall apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principle Act before commencement of the Act unless the parties otherwise agree. In such a situation, ratio of **Bharat Broadband Network Limited vs. United Telecoms Limited**, (2019) 5 SCC 755 would apply to the aforesaid case and official arbitrator has to be appointed in terms of Arbitration Clause No.25-A. The objection as regards filing of claim after a period of 2½ years is concerned, the same cannot be entertained as the claim has been filed within a period of three years of limitation. So far as the non compliance of sub clause 10 of the Arbitration Clause No. 25-A is concerned, learned counsel for the petitioner submits that the petitioner is ready to deposit the security of 3% of the total amount claimed by the petitioner by way of FDR to the satisfaction of the Executive Engineer.

Since the Chief Engineer has forfeited his right of appointing any arbitrator, therefore, this Court has to appoint eligible person as an arbitrator from the approved list.

In view of the facts and circumstance of the case, I hereby appoint Sh.Anil Kumar Aggarwal, Additional Director, Prosecution and Legal Remembrancer, HSVP (Retd.), House

No. 519, 1st Floor, MDC, Sector 6, Panchkula (Mobile: 9888492885) as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent(s) in equal proportion.

The venue will be as per the convenience of the Arbitrator.

A copy of this order be dispatched to the Arbitrator at the following address:-

Sh.Anil Kumar Aggarwal, Additional Director,
Prosecution and Legal Remembrancer, HSVP (Retd.),
House No. 519, 1st Floor, MDC, Sector 6, Panchkula
(Mobile: 9888492885).

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

18.11.2022

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whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no