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

**ARB No.64 of 2018 (O&M)
Date of Decision: 27.10.2022**

M/S J.K. FIXING CONTRACTOR

.....Petitioner

Vs

M/S PARAS BUILDTECH INDIA (P) LTD

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Hashita Wadhwa, Advocate for
Mr. Puja Chopra, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute between the parties.

[2]. Petitioner is sole proprietorship firm of which Jitender Kumar is the sole proprietor. Petitioner was allotted work by the respondent for construction of civil and structural work for proposed commercial complex, Block-B, Paras Trinity at Sector 63, Gurugram. Letter of intent was signed on 19.11.2014

between the petitioner and the respondent detailing the work order. In order to complete the work, the petitioner had to shift his material to the site which was duly received by the authorized person of the respondent namely Mr. Chandermani Pandey. After due satisfaction of work done, the petitioner started to shift the material. Bill amounting to Rs.17,29,450/- was duly received by the aforesaid Mr. Chandermani Pandey, but thereafter the payment was refused and the petitioner was not even allowed to shift his material and equipments which were lying in the premises of the respondent.

[3]. On 09.06.2015 on the false pretext of making payment, the respondent even forced the petitioner to execute a contract which was styled as “settlement agreement-cum-indemnity bond”. The execution of said agreement was on account of coercion and duress as the respondent was in dominant position. Petitioner was handed over a meager amount of Rs.3,57,311/- by the respondent.

[4]. Petitioner had to file two civil suits i.e. one for mandatory injunction and damages and second suit for recovery in the Courts at Gurugram. The respondent appeared in those civil suits and even filed application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to the Arbitrator in view of existing arbitration clause in the

agreement dated 09.06.2015. In view of aforesaid stand of the respondent, the petitioner had to withdraw the civil suits and thereafter got legal notice issued on 22.01.2018, calling upon the respondent to appoint Arbitrator for resolving the dispute.

[5]. Notice of motion was issued on 16.03.2018. As per office report dated 20.11.2019, respondent has been duly served. Even Mr. Atul Yadav, Advocate appeared on behalf of the respondent on 22.11.2019 and thereafter till date, reply has not been filed. Tentative value of the claim as set up by the petitioner is Rs.14 lakhs along with interest subject to final adjudication by the Arbitrator.

[6]. In view of aforesaid unrebutted facts, I am of the view that the issue is arbitrable in nature. The Court is required to refer the dispute between the parties to the Arbitrator without any in-depth examination of the dispute. The Court is required to satisfy itself that the dispute falls within the ambit of arbitration clause. All disputes are to be decided by the sole Arbitrator on merits as the same cannot be decided by this Court under Section 11(6) of the Act. The conclusion is inescapable that even after conclusion/culmination of principal agreement, the dispute remained to be decided which has arisen in relation to the claim in respect of principal agreement which was terminated or annulled as in the present case on

account of execution of supplementary agreement and the consequences thereof. Such dispute clearly falls under the arbitration clause which provides that in the event of any dispute or difference arising at any time between the parties in relation to the agreement, it shall be referred to the sole Arbitrator irrespective of whether the agreement is in existence or not, the arbitration clause would survive. Reference can be made to **Everest Holding Limited vs. Shyam Kumar Shrivastava and others, (2008) 16 SCC 774** and **Reva Electric Car Company Private Limited vs. Green Mobil, (2012) 2 SCC 93.**

[7]. The objection of the respondent as regards non-arbitral claim on account of signing of supplementary agreement is of no consequence as the validity of the same would still survive in view of ratio of **Everest Holding Limited's** case (supra) and Section 16(1)(a) of the Act provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. The meaning of the aforesaid clause would tend to show that even on the termination of the agreement, the arbitration clause would still survive. Even the Arbitrator can decide his jurisdiction in terms of Section 16 of the Act.

[8]. Keeping in view the facts and circumstances of the case, I hereby appoint **Ms. Harsimrat Rai, Advocate R/o # 401,**

GH-9, Sector 20, Panchkula, Mobile No.9915468877 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.

[9]. 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 both the parties equally.

[10]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to her convenience.

[11]. A copy of this order be dispatched to the Arbitrator at the following address:-

Ms. Harsimrat Rai, Advocate
R/o # 401, GH-9, Sector 20, Panchkula,
Mobile No.9915468877

[12]. Petition stands disposed of accordingly.

October 27, 2022
Atik
Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No