

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB No. 42 of 2022 (O&M)

Date of Decision: 16.12.2022

RAHUL GUPTA AND ANR.

.....Petitioner

Versus

V.K.G.ASSOCIATES ENGINEERS & CONTRACTORS

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vipul Joshi, Advocate,
for the petitioners.

Mr. Sandeep Verma, Advocate,
for respondent.

RAJ MOHAN SINGH, J. (Oral)

The petitioners have preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the sole arbitrator in order to adjudicate the dispute between the parties.

In the month of December 2017, the respondent gave an advertisement, publication and representations through broker, namely Pravesh Bhatia of M/s Absolute Realty and invited applications from buyers/ investors in the commercial project known as AIPL JOY CENTRAL (hereinafter referred to as "the Project"). The theme of the Project was an Assured Returns Scheme, wherein the petitioners would get assured returns of 11% per annum (disputed by the respondent by citing 9.5% per annum) of total money i.e. entire cost of the

commercial space, which was to be paid upfront. It was re-assured to the petitioners that the entire scheme was based on hassle free enjoyment of the investment. Even though the complete sale price was being paid upfront, the dispute arose between the parties and the petitioners claim an amount of Rs.55,13,600/- along with interest as well as the outstanding assured returns.

It appears that the respondent is at variance in terms of the due amount. As per the written statement filed by the respondent, the respondent has relied upon a letter dated 19.11.2020, thereby quoting the entitlement of the petitioners to the tune of Rs.43,38,320/- as on 25.01.2018. The respondent has not denied the claim of the petitioners except to deny the extent of the amount to which the petitioners are entitled.

The agreement between the parties having arbitration clause No.53 is not in dispute. However, learned counsel for the respondent submits that the Arbitrator can only be appointed after exhausting the stages provided under the arbitration clause.

A perusal of the record would show that earlier an effort was made to get the issue settled by means of mediation for which the matter was referred to the Mediation and Conciliation Centre of this Court.

Learned counsel for the petitioners submits that owing to the non cooperation rendered by the respondent, mediation proceedings could not fructify. This allegation has been denied by learned counsel for the respondent. Even in the notice of invocation, the petitioners have also stressed upon the process of mediation before going to the arbitral proceedings. This Court has recorded in the order dated 01.09.2022, that mediation has already failed.

After coming into force the amendment in the Act, vide Amendment Act No.3 of 2016 w.e.f. 23.10.2015, the appointment of official arbitrator is deprecated in view of law laid down in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1** Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

The issue involved in the present petition is arbitral in nature for which an independent arbitrator has to be appointed.

In view of the aforesaid facts, I hereby appoint Hon'ble Mr. Justice Ramendra Jain (Retd.), House No. A-143, Sushant Lok (Umeed Marg), Block A, Phase-1, Gurgaon) (Mobile: 9971288222) 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.

The respondent shall also be entitled to raise any counter claim in respect of the stand taken in reply to the notice of invocation.

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

Hon'ble Mr. Justice Ramendra Jain (Retd.), House No. A-143, Sushant Lok (Umeed Marg), Block A, Phase-1, Gurgaon) (Mobile: 9971288222)

Petition stands disposed of accordingly.

16.12.2022

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**(RAJ MOHAN SINGH)
JUDGE**

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