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

**ARB No.17 of 2019 (O&M)
Date of Decision: 22.11.2022**

RAJBIR SINGH KINHA(GOVERNMENT CONTRACTOR)

.....Petitioner

Vs

**STATE OF HARYANA THR ITS ADDITIONAL CHIEF
SECRETARY AND ANR**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

Mr. Zorawar Singh Chauhan, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The Petitioner has preferred this petition under Section 11(4) 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 arising out of contract agreement dated 27.02.2015.

[2]. In pursuance of tender floated by the respondents, the petitioner was given the assignment of completion of work namely construction of RCC boundary wall for 19 MLD STP (under construction) in Pt. BDS PGIMS, Rohtak and all other works contingent thereto. Having accepted the assignment, the

letter memo No.2267 dated 27.02.2015 was issued vide which the petitioner was awarded the said work assignment for estimated cost of Rs.32,23,709/-. The work was to be completed within six months w.e.f. 03.03.2015. The work was completed by the petitioner on 20.10.2017 and thereafter final bills were submitted after working out the dues in the following manner:-

<i>Claim No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>Performance Security and security deducted from running Bills/final bill including adjusted amount of Rs.64,500/- of earnest money</i>	<i>2,92,896/-</i>
2.	<i>Balance payment of final bill outstanding against the department</i>	<i>10,40,070/-</i>
3.	<i>The work was completed on 20.10.2017, the full payment of final bill was required to be made within 3 months but balance amount of final bill amounting Rs.10,40,070/- is still outstanding. So the applicant is entitled to interest @18% per annum.</i>	<i>62,404/-</i>
4.	<i>Difference of quantity and rate of cement concrete 1:2:4 and 1:1.5:3</i>	<i>38,214/-</i>
5.	<i>Rent of Road roller at Rs.1,000/- per hour for two days 12 hours working per day</i>	<i>24,000/-</i>
6.	<i>Claim on account of refund of wrongly deducted amount of steel</i>	<i>27,684/-</i>
7.	<i>Claim for dewatering of sub soil water</i>	<i>17,57,800/-</i>
8.	<i>Claim for balance earth work for beans</i>	<i>13,466/-</i>
9.	<i>Litigation expenses</i>	<i>Matter of calculation</i>
10.	<i>Payment of interest as per provision of Arbitration and Conciliation Act 1996</i>	<i>Matter of calculation</i>
	<i>Total from Sr. No.1 to 8</i>	<i>32,56,534/-</i>

[3]. A dispute arose between the parties. The respondents have raised objection as regards non-compliance of clause 5-A of the contract thereby alleging that the petitioner did not comply with the requirement of completing the work within the period prescribed under the said clause, whereas the petitioner has denied the same by saying that on completion of work, the entire dues were not cleared except making payment towards specified claims.

[4]. Learned State counsel submits that the amount towards security/earnest money had already been paid even prior to filing of the present petition.

[5]. On 14.11.2022, following order was passed by this Court:-

“CM-13990-CII-2022

Perusal of the record would show that vide order dated 10.10.2022, learned counsel for the petitioner sought time to verify whether the petitioner is entitled for some more amount even after payment of final bill and security/earnest money.

In compliance of the said order dated 10.10.2022, the petitioner has filed his additional affidavit along with details of payment showing that an amount of Rs.19,23,568/- is still pending against the respondents being a disputed amount.

Notice of this application.

On asking of the Court, Mr. Sumit Gupta, Addl. A.G., Haryana accepts notice on behalf of the respondents and seeks sometime to verify the assertion arising out of the additional

affidavit.

*Put up along with the main case on the date fixed i.e.
22.11.2022.*

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Adjourned to 22.11.2022.”

[6]. In compliance of the aforesaid order dated 14.11.2022, petitioner has filed CM No.13990-CII of 2022 thereby filing an additional affidavit of the petitioner detailing the payments received and pending against the Department in respect of the work done arising out of the contract agreement. The petitioner has given tabulated information viz.-a-viz. the work done and payments received and reference of balance payment, if any against the specified work assignment completed by the petitioner. The tabulated information shows that the total amount arising out of different work assignments, payment received against specified work done and balance amount which remained unpaid even after completion of the work assignment. The petitioner has shown an amount of Rs.19,23,568/- towards unpaid claim of the petitioner with reference to claims No.3, 4, 5, 6, 7 and 8. As regards claims No.9 and 10, the issue of balance payment is subject to the calculations made by the parties.

[7]. In reply to the aforesaid application, the respondents have tried to explain the nature of work executed by the

petitioner viz.-a-viz. the payment received by him. The respondents have given information under the following heads:-

- i) Payment of security and earnest money.
- ii) Balance payment of final bill.
- iii) Interest component of Rs.62,404/- on final bill amount of Rs.10,40,000/-.
- iv) Difference of quantity and rate of cement concrete 1:2:4 and 1:1.5:3 for Rs.38,214/-.
- v) Rent of road roller for Rs.24,000/-.
- vi) Claim for Rs.27,684/- on account of wrongly deducted amount of steel.
- vii) Claim for dewatering of sub soil water Rs.17,57,800/-.
- viii) Claim for balance earth work for beams Rs.13,466/-.
- ix) Litigation expenses.
- x) Payment of interest as per provision of Arbitration and Conciliation Act 1996.

[8]. Perusal of reply filed by the respondents would indicate that against some of the heads, dispute shall remain debatable. The substantial part of the claim has already been answered by the respondents and the dispute appears to be only to the extent of Rs.19,23,568/-. The contract agreement having arbitration clause is not in dispute. The extent of work undertaken by the petitioner and payments having been already made shall be subject to the final acknowledgment by the parties in an appropriate proceedings. The final adjudication of

the claim of the petitioner however be subject to the material to be led by the parties before the Arbitrator.

[9]. Evidently, no supplementary agreement was executed between the parties. The clause itself provides that in the event of any dispute or difference between the parties in relation to the agreement, it shall be referred to the sole Arbitrator. The clause is not limited to the dispute relating only to the initial period of the agreement irrespective of whether the agreement is now in existence or not after payment of final bill, the arbitration clause would survive. The Court is required to refer the disputes between the parties to the Arbitrator without any in-depth examination of the disputes at this juncture. The Court is required to satisfy itself that the dispute falls within the ambit of the arbitration clause and all the disputes are to be decided by the process of arbitration on merits as the same cannot be decided by this Court while exercising the powers under Section 11(6) of the Act.

[10]. The conclusion is inescapable that even after conclusion/culmination of the principle agreement, the dispute remains to be decided which has arisen in relation to the claim in respect of principle agreement which was either terminated or answered by way of payment of final bill. Such dispute clearly falls under the arbitration clause which provides that in the event

of any dispute or difference arising between the parties in relation to the agreement, it shall be referred to the process of arbitration irrespective of whether the contract agreement is now 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.**

[11]. In view of aforesaid facts and circumstances of the case, I hereby appoint **Sh. S.P. Arora, HCS (Retd.) presently Advocate, R/o #716, Sector 7, Chandigarh, Mob. No.09501311333, 0172-2790976, Email: sparora1994@gmail.com** 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.

[12]. 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.

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

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

Sh. S.P. Arora, HCS (Retd.) presently Advocate,
R/o #716, Sector 7, Chandigarh,
Mob.No.09501311333, 0172-2790976,
Email: sparora1994@gmail.com

[15]. Petition stands disposed of accordingly.

November 22, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No