

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

103+253

ARB No. 355 of 2021 (O&M)

Date of Decision: 10.10.2022

M/s Garg Construction Company Builder and Contrator

.....Petitioner

Vs

Punjab Mandi Board and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.P.S.Rana, Advocate
for the petitioner.

Mr.Parminster Singh, Advocate
for respondents No.1 and 3.

RAJ MOHAN SINGH, J.(Oral)

CM No.13041-CII of 2021

For the reasons mentioned in the application, the same is allowed. Short reply on behalf of respondents No.1 and 3 is taken on record.

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of sole Arbitrator to resolve the dispute arising out of agreement No. 63 of 2015-16 for execution of work of P/L C.C. flooring and construction of drains in streets of Village

Ghuriana Halka Jallabad District Fazilka allotted vide letter No.7691 dated 12.08.2015.

Learned counsel for the petitioner submits that in respect of the dispute regrading non payment of dues, the petitioner has already invoked the arbitration clause on 10.06.2021 by way of a notice of invocation addressed to the Chief Engineer (South), Punjab Mandi Board, SAS Nagar, Mohali.

Notice of motion was issued on 06.07.2021. Reply has been filed on behalf of respondents No.1 and 3. Perusal of office note dated 07.09.2021 would show that the office of respondent No.2 remained unserved with the report that the matter did not relate to the said office.

In view of the aforesaid report, representation on behalf of respondents No.1 and 3 would suffice to meet the requirement of pleadings in the present case. As per short reply on behalf of respondents No.1 and 3, the petitioner has not raised the dispute within a period of 60 days as mandatory by clause No. 25 (ii) of the Agreement. Copy of the agreement was duly received by the petitioner on 20.10.2020 and the dispute was raised before the Engineer vide letter dated 11.02.2021, much after the requisite period of 60 days. By referring to the aforesaid, learned counsel for respondents No.1 and 3 submits that the claim is barred by limitation.

Learned counsel for the petitioner submits that owing to the conduct of the respondents, the petitioner had to file CWP No.26611 of 2018, which was disposed of vide order dated 10.12.2018 with the following order:-

“Instant petition has been filed seeking a direction to the respondents to release payment in respect of the bills of the petitioner pending with the department.

Petition is hereby disposed of. In case petitioner sends a fresh copy of the legal notice/representation to the concerned authority alongwith a copy of this order by registered/speed post, the authority shall pass a speaking order at the earliest, in any case not later than six weeks of receipt thereof. If any amount is found due to the petitioner, payment of same be released after sanction from the Finance Department, if required.

**(RAJAN GUPTA)
JUDGE**

December 10, 2018”

Thereafter, in pursuance of the aforesaid, the Executive Engineer, Punjab Mandi Board, Fazilka decided the claim of the petitioner vide order dated 20.12.2018, thereby mentioning that after closing of work and checking of third party audit by PUDA, an amount of Rs.18.78 lacs was demanded from PUDA for the work assignments in question so as to make

balance payment demanded by the contractor as per the pleadings of the writ petition and the contempt petition. As soon as the funds are made available by the funding agency i.e. PUDA, through Deputy Commissioner, Fazilka, respondents would make the payment to the contractor after clearing all the necessary deductions levied on Public Development Works.

Admittedly, the aforesaid order was passed on 20.12.2018 and thereafter, no payment has been made to the petitioner till date.

In view of aforesaid pleadings, there exists bonafide dispute between the parties for which arbitration clause has been invoked by the petitioner. The question of limitation is also required to be decided by the Arbitrator in view of the facts and circumstances of the case.

Tentative value of the claim is Rs. 1,00,15,369/-.

In view of aforesaid, I hereby appoint Hon'ble Mr. Justice R.P. Nagrath (Retd.), House No. 162, Sector 123, New Sunny Enclave, Mohali (Mobile: 8558809901) 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 equally shared by the parties.

The venue of the Arbitration proceedings shall be the place to be disclosed by the Arbitrator as per his convenience.

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

House No.162, Sector 123, New Sunny Enclave,
Mohali.

(RAJ MOHAN SINGH)
JUDGE

10.10.2022

anita

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