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

ARB No.619 of 2021 (O&M)

Date of Decision: 21.11.2022

ANIL KUMAR DAHIYAPetitioner

Vs

**MUNICIPAL CORPORATION GURUGRAM AND ANOTHER
.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Vibha Nagar, Advocate for
Mr. Deepak Singh Saini, Advocate
for the petitioner.

Mr. Arshad Ali, Advocate for
Mr. Lokesh Sinhal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11(6), (7) & (8) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the 'Act') for the appointment of an independent Arbitrator in terms of arbitration Clause No.25-A of the agreement dated 15.07.2019 for adjudication of dispute between the parties.

[2]. The petitioner is a Contractor and was allotted the work assignment of construction of road with RMC M-40 in various streets at Basai Enclave Part-II, Ward No.13, MC, Gurugram on 10.07.2019 on the basis of Tender dated 14.02.2019.

[3]. The petitioner was the lowest tenderer and the work

was accordingly allotted to the petitioner. The scheduled period of completion of the work was upto 14.03.2021. The petitioner had completed 95% of the work in all respects according to the instructions of Engineer-Incharge and the remaining 5% of the work was delayed due to COVID-19 pandemic.

[4]. A dispute arose between the parties regarding balance amount of Rs.92,21,292/- for which the petitioner has already submitted his bills, but the payment is still pending and no response has been given by the respondents/Department. The petitioner has already invoked clause No.25-A of the agreement.

[5]. Learned counsel for the petitioner submits that the suit for recovery filed in the Civil Court at Gurugram has already been withdrawn on 30.11.2021.

[6]. On the other hand, learned counsel for the respondents submits that the petitioner has not deposited security deposit to the extent of 7.5% of the total claim which is mandatory requirement for referring the dispute to the Arbitrator. The arbitration clause 25.A(vii) prescribes for deposit of 7½% of the amount if the claim amount exceeds an amount of Rs.1 lakh.

[7]. Learned counsel for the petitioner submits that the petitioner is ready and willing to deposit 7½% of the amount

claimed before the competent authority within one month.

[8]. Learned counsel for the respondents has also agreed that in case the aforesaid amount is deposited within one month, the respondents have no objection for the appointment of an Arbitrator as per arbitration clause.

[9]. Learned counsel for both the parties agree that some independent Arbitrator be appointed in the facts and circumstances of the case. In **Vijay Kumar Sharma @ Manju vs. Raghunandan Sharma @ Baburam & Ors., 2010(2) SCC 486**, the Hon'ble Apex Court has held that even pendency of an application under Section 8 before any Court will not come in the way of an arbitration being commenced or continued and an arbitral award being made. Therefore, the objection, if any, as regards filing of civil suit pales into insignificance. Since, learned counsel for the petitioner has agreed for the deposit of security amount to the extent of 7½% of the amount claimed, therefore, learned counsel for the respondents has rightly given consent for reference of the dispute to the sole Arbitrator.

[10]. In the light of consensus arrived at between the parties, I hereby appoint Sh. V.K. Maheshwari, Principal Judge, Family Court (Retd.) R/o H.No.85, Sector 30, Gurugram, Haryana-122001, Mobile No.9910384671, 0124-2384545, Email:

vkmjudge4@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.

[11]. 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.

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

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

Sh. V.K. Maheshwari, Principal Judge, Family Court (Retd.)
R/o H.No.85, Sector 30, Gurugram, Haryana-122001,
Mobile No.9910384671, 0124-2384545,
Email: vkmjudge4@gmail.com

[14]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

November 21, 2022

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No