

237

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

**ARB No.291 of 2019 (O&M)
Date of Decision: 12.12.2022**

**M/S KUBER CONSTRUCTIONS, SANGRUR
.....Petitioner**

**Vs
IMPROVEMENT TRUST, SANGRUR AND ANOTHER
.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ishan Gupta, Advocate
for the petitioner.

Mr. Arjun Dhaliwal, Advocate for
Ms. Deepali Puri, Advocate
for respondents No.1 and 2

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner seeks appointment of the sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for settlement of disputes arising out of agreements dated 27.12.2010, 21.12.2010 and 21.07.2011.

[2]. Learned counsel for the petitioner submits that in an identical case i.e. *ARB No.40 of 2015* titled '*M/s Parkash Chand Goyal vs. Improvement Trust Sangrur, etc.*', decided on 04.09.2015, an Arbitrator has already been appointed by the High Court while exercising the powers under Section 11(6) of

the Arbitration and Conciliation Act, 1996 and the Arbitrator has already pronounced the award. The said award is further challenged by the respondents-Improvement Trust and the litigation is still pending.

[3]. In the reply filed by the respondents/Improvement Trust, plea of limitation has been taken in para no.2.5 with further recital that all the payments have already been made to the petitioner and no amount is due. It is a settled principle of law that even in case of slightest doubt as regards limitation and cause of action, the matter has to be referred to the Arbitrator in terms of arbitration clause that has already been invoked by the petitioner. The petitioner has tentatively valued its claim to the tune of Rs.27 lakhs subject to final adjudication by the Arbitrator.

[4]. In view of **Bharat Broadband Network Ltd. vs. United Telecoms Ltd., (2019) 5 SCC 755**, the arbitral proceedings started prior to the commencement of Amending Act of 2015 are saved from inapplicability thereof. Section 26 of the Amending Act reads as under:-

“26. Act not to apply to pending arbitral proceedings- Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise

agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

[5]. Perusal of aforesaid Section read with Clause 25 of the General Rules & Directions for the guidance of Contractor dated 27.12.2010 would show that nothing contained in the Amending Act shall apply to the arbitral proceedings commenced in accordance with provisions of Section 21 of the principal Act before the commencement of this Act, unless the parties otherwise agree. Perusal of the clause 24 of the said General Rules & Directions for the guidance of Contractor would suggest that the parties have not agreed in respect of applicability of statutory amendment, modification or re-enactment, if any brought out at a subsequent stage.

[6]. In view of **Bharat Broadband Network Ltd.'s** case (supra), I deem it appropriate to dispose of this petition by appointing Superintending Engineer of the Circle of the Buildings and Road Branch of the Public Works Department concerned 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.

[7]. 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.

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

[9]. Petition stands disposed of accordingly.

December 12, 2022
Atik

(RAJ MOHAN SINGH)
JUDGE

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