

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

Reserved on 13.12.2022

ARB No.277 of 2020(O&M)
Date of Decision: 25.01.2023

M/s Jaswant Rai Verma

-Petitioner

Versus

State of Punjab and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. R.S. Pandher, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.

CM No.12334-CII of 2022

Replication is taken on record subject to all just
exceptions.

Application stands allowed.

Main case

[1]. The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of sole Arbitrator to adjudicate the dispute between the parties.

[2]. The petitioner claims itself to be a Class-A Government Contractor, who was allocated the work of construction of roads and culverts work falling under the jurisdiction of Sub Divisional Engineer, Provincial Sub Divisional, PWD (B&R) Branch, Roopnagar, which was approved under the Rural Mission 2015-16 Scheme in Constituency Roopnagar. The contract was executed for estimated value of Rs.1,95,35,370/-. The petitioner completed the work within the time after due extension granted by the respondents, but the respondents have not released the full payment of the petitioner in time. The respondents have made payment of Rs.30,44,483/- till 31.07.2016 and thereafter, the petitioner made a request to the respondents on 24.04.2017 to release the balance amount of Rs.1,64,90,887/- along with the interest. The petitioner also requested the respondents that 100% work had already been completed, which was duly acknowledged by the respondent No.3 vide letter dated 02.05.2017. The petitioner had already completed 100% work in view of extended period upto

31.03.2017 without any escalation and variation. The Superintending Engineer had granted extension upto 31.03.2017 and the petitioner had completed 100% work within the period, but the respondents did not release the payment of Rs.1,64,90,887/- within the time framed in the contract agreement despite numerous requests made by the petitioner.

[3]. Feeling aggrieved, the petitioner filed CWP No.29206 of 2017 in the High Court, which was disposed of with a direction to the respondents to release the payment by passing a speaking order. In compliance thereof, the respondent No.3 passed a speaking order on 23.01.2018 saying that the funds are likely to be received and payment shall be released as per actual work done by the petitioner. Thereafter, vide order dated 11.06.2018, the respondents deducted the liquidated damages of Rs.5,86,061/-, against which, the petitioner submitted representation before the Superintending Engineer on 22.06.2018 on the ground that the liquidated damages were wrongly deducted. Vide order dated 05.03.2020, the order of the respondent No.3, imposing liquidated damages was set aside by the Superintending Engineer by passing a detailed order and withheld liquidated amount was released on 04.04.2020. The respondents have delayed the release of part payment of Rs.1,35,000/- as well as delayed the release of security and

bank guarantee.

[4]. The petitioner served a legal notice to the respondents, but despite that, the respondents have wrongly withheld the amount and ultimately released the payment after huge delay. There was a delay in releasing the bank guarantee, security and amount on account of liquidated damages. Owing to the aforesaid situation, the petitioner served a legal notice upon the respondents to pay interest on the delayed payment, which according to the petitioner, came out to be Rs.45 lacs. The contract agreement having arbitration Clause 25 is not in dispute.

[5]. As per reply filed by the Executive Engineer, Construction Division, PWD (B&R) on behalf of the respondents No.1 to 3, the work was started on 17.06.2016 and the same was completed within the extended time limit upto 31.03.2017. As per Clause 39.1 of Section 3-General Conditions of Contract, the petitioner was required to submit monthly bills in order to be entitled for payment on a pro-rata basis of the estimated quantity of work completed by it. Three running bills were submitted besides final bill on 01.08.2016, 08.11.2016, 30.03.2017 and 22.03.2019. The aforesaid bills were required to be checked and verified within 30 days as per Clause 39.2 and consequently, the payments were to be made immediately by

the respondents.

[6]. Learned State counsel has furnished the tabulated information in para No.5 of the reply to the effect that the payment of his first running bill was made on 04.10.2016, payment of second running bill was made on 03.12.2018, payment of third running bill was made on 03.12.2018 and payment of fourth running bill was made on 15.07.2019.

[7]. If the date of submission of aforesaid running bills are seen, then the delay in making the payments is apparent on the face of the record.

[8]. Learned State counsel further submits that the delay in making the payment for each bill is a separate and independent cause of action. The cause of action was required to be agitated during the period prescribed in Clause 25-Dispute Resolution Mechanism from the due date of 30 days of raising the bill.

[9]. The tabulated information furnished in para No.6 of the reply would indicate that the respondents have made remarks for first running bill to fourth running bill to contend that the request made on 18.04.2020 for arbitration was time barred.

[10]. The issue of cause of action being *ex facie* time barred or not, cannot be commented at this stage. It is a settled principle of law in view of **Bharat Sanchar Nigam Ltd. and**

another Vs. M/s Nortel Networks India Pvt. Ltd., 2021(2)

RCR (Civil) 337 and Article 137 of the Limitation Act that even in case of slightest doubt, the issue needs to be referred to the Arbitration.

[11]. The petitioner has tentatively valued its claim to the tune of Rs.45 lacs along with the interest.

[12]. For the reasons recorded hereinabove, this petition is allowed and Mr. Brij Mohan Vinayak, Advocate, House No.538, Phase-1, Mohali-160055, Mobile No.9417284926, vinayaklawoffice@gmail.com is appointed 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.

[13]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the 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.

[14]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[15]. A copy of this order be dispatched to Mr. Brij Mohan

Vinayak, Advocate, at the following address:-

House No.538, Phase-1, Mohali-160055,

Mobile No.9417284926,

vinayaklawoffice@gmail.com

25.01.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No