



ARB-128-2018 (O&M)

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

(218)

ARB-128-2018 (O&M)

Date of decision:- 09.09.2024

M/S B.R. ARORA & ASSOCIATES PVT. LTD.

... PETITIONER

VERSUS

**HARYANA STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD. (HSIIDC)**

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. C.S.Pasricha, Advocate and
Mr. Sushil K. Bhardwaj, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate and
Mr. Mayank Vashishth, Advocate
for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of a sole Arbitrator.

2. Counsel for the petitioner submits that a work order dated 14.12.2005, Annexure P-3, for construction of roads in Phase-III and IV, IMT Manesar, District Gurugram, was placed on the petitioner for value of ₹22,07,59,524/-. He submits that there was a breach on the part of the

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respondent and the work could not start on the stipulated date, as the respondent failed to handover a clear free site for construction. He submits that after grant of extension, work was completed on 07.10.2009 and the petitioner raised claims vide letter dated 15.10.2009, Annexure P-4, in terms of Clause 25 (A) of the contract agreement, which were rejected by the respondent on 24.11.2009, Annexure P-5. By communication dated 03.03.2010, Annexure P-6, petitioner invoked the Arbitration Clause and simultaneously requested the respondent to make the payment against the final bill. It has been submitted that a penalty of ₹11,03,800/- was imposed by the respondent vide order dated 14.05.2011, Annexure P-8, and some payments, after making deductions, were withheld from the petitioner. Petitioner filed a petition (ARB-62-2014) for appointment of an Arbitrator, which was disposed of by this Court on 23.04.2014, Annexure P-13, on the statement made on behalf of the petitioner that requisite amount, proportionate to the claim, would be deposited with the respondent prior to appointment of an Arbitrator as per the Arbitration Clause. Counsel submits that the petitioner repeatedly approached the respondent for acceptance of Fixed Deposit Receipts, but the respondents demanded security in the shape of demand drafts vide communication dated 18.02.2016, Annexure P-16. Challenging this letter, petitioner filed a petition under Section 9 of the Act before the learned District Judge, Gurugram and during its pendency, again by letter dated 26.03.2018, Annexure P-18, petitioner undertook that FDR of Rs.87,15,000/- will not be encashed till the conclusion of arbitral proceedings. Counsel prays that an Arbitrator be appointed and the FDRs,

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offered by the petitioner, be accepted as security in terms of the Arbitration Clause.

3. Upon notice by this Court, petition has been contested by the respondent by filing a reply, wherein it has been submitted that the work was being executed at a slow pace and the petitioner stopped the execution in February, 2007. A penalty was imposed upon him and during a meeting held between the parties, time for conclusion of the work was extended. During inspection on 21.05.2009, it was found that the petitioner had completed 78% of the work allocated to him. He eventually completed the contract on 07.10.2009 and the final bill was discharged on 13.07.2011, and the penalty amount, imposed upon him, was reduced. Counsel for the respondent has submitted that there is a pre-condition for making a security deposit in Clause 25 (A) of the contract before an Arbitrator can be appointed and despite having undertaken to adhere to it, petitioner has not made the deposit and instead, unsuccessfully challenged the communication, addressed by the respondents, whereby petitioner was asked to make the deposit. It is his categorical case that till the petitioner does not make the requisite deposit, Arbitrator cannot be appointed.

4. I have heard counsel for the parties and considered their respective submissions.

5. The controversy in this matter revolves around Sub-Clause 7 of Arbitration Clause 25 (A), which is reproduced hereunder:-

“7. It is also a term of this arbitration agreement that where the party invoking arbitration is the contractor no reference for arbitration shall be maintainable unless the



contractor furnishes to the satisfaction of the AGM/DGM(IA)-incharge of the work a security deposit of a sum determined according to details given below and the sum so deposited shall on the termination of the arbitration proceedings be adjusted against the cost if any, awarded by the arbitrator against the Claimant party and the balance remaining after such adjustment in the absence of any such cost being awarded the whole of the sum will be refunded to him within one month from the date of the award:-

	AMOUNT OF CLAIMS	RATES OF SECURITY DEPOSIT
i)	For claims below Rs.10,000/-	2% of amount claimed
ii)	For claims of Rs. 10,000/- and above and below Rs.1,00,000/-	5% of claimed amount
iii)	For claims of Rs. 1,00,000/- and above	10% of amount claimed

The stamp fee due on the award shall be payable by the party as desired by the arbitrator and in the event if such party's default stamp fee shall be recoverable from any other sum due to such party under this or any other contract.”

6. A similarly worded Clause came up for interpretation before the Supreme Court in **S.K.Jain Versus State of Haryana and another, (2009) 4 SCC 357** and it was held to be mandatory. The judgment of the Supreme Court in **S.K.Jain’s** case (supra) has been noticed in the subsequent



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judgment rendered by the Supreme Court in ***Lombardi Engineering Limited vs Uttarakhand Jal Vidyut Nigam, 2023 SCC OnLine SC 1422*** and it has been observed that it is not in conflict with the judgment rendered in ***M/s Icomm Tele Ltd. Versus Punjab State Water Supply & Sewerage Board & Anr., (2019) 4 SCC 401***. This Court is, therefore, of the view that the pre-deposit of the security amount is mandatory and in the absence of such a deposit, no reference can be made to the Arbitrator.

7. Furthermore, the previous petition, filed by the petitioner, seeking appointment of an Arbitrator, was disposed of on 23.04.2014, while passing the following order:-

“It is not disputed that a pre-condition for invoking the arbitration of making a security deposit has not been complied with and thus there cannot be said to be a failure on the part of the respondent to appoint an Arbitrator (Municipal Corporation, Jabalpur and others Vs. Rajesh Construction Company AIR 2007 SC 2069).

In view of the aforesaid, learned counsel for the petitioner states that instead of pressing the petition, she would first make deposit of the requisite amount depending upon the claim and learned counsel for the respondents undertakes to the Court that on such deposit being made, the Arbitrator will be appointed within the time stipulated as per the Arbitration Clause.

The aforesaid statement is taken on record.

Petition accordingly stands disposed of.”

8. It is, therefore, evident from the above that the petitioner had agreed to make the requisite deposit upon which an undertaking was given by the respondent that an Arbitrator will be appointed. On the asking of the



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respondent to furnish the demand draft, petitioner approached the District Judge, Gurugram impugning the communication, sent by the respondent, which was rejected vide order dated 12.07.2018 and the demand of security deposit the shape of a demand draft was upheld. Petitioner approached this Court by filing FAO-COM-3-2019, however, on 13.07.2022 on a statement made by the counsel for the petitioner, appeal was disposed off as infructuous. The order passed by the learned District Judge has, therefore, attained finality. Petitioner, therefore, cannot wriggle out of the obligatory condition of making a pre-deposit by refusing to furnish a demand draft.

9. At this stage, counsel for the petitioner submits that the petitioner has prepared Fixed Deposit Receipt to the tune of ₹87,15,000/-, which he is ready to deposit as security. However, counsel for the respondent submits that as such an offer, made by the petitioner, has already been rejected by the District Judge, Gurugram, which has been affirmed upto this Court, the same cannot be accepted.

10. Till the time the petitioner does not make the requisite pre-deposit by way of a demand draft, the prayer made in the petition cannot be entertained.

11. As there is no merit in the petition, it is hereby dismissed.

12. Pending application, if any, stands disposed of.

09.09.2024

Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No