



ARB-33-2023 (O&M)

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

(247)

ARB-33-2023 (O&M)
Date of decision:- 16.09.2024

M/s Brij Gopal Construction Co. Pvt. Ltd.

... Petitioner

Versus

Haryana State Industrial & Infrastructure Development Corporation,
Panchkula

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Suvir Kumar, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate and
Mr. Vicky Chauhan, Advocate
for the respondent-HSIDC.

SUVIR SEHGAL, J. (ORAL)**CM-893-CII-2023**

1. Exemption, as prayed for, is granted.
2. Application is allowed.

Main case

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 an Arbitrator.

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2. Counsel for the petitioner submits that an agreement dated 23.02.2010, Annexure P-1, was entered into between the parties for 'Providing Storm Water Drainage System in Technology Parks' etc. at I.M.T., Manesar, Gurugram. He submits that although there was some delay, but the work was completed on 19.07.2011. He submits that by various communications addressed to the Senior Manager (IA) between 27.04.2013, Annexure P-3, to 22.07.2017, Annexure P-13, petitioner had repeatedly requested for the payment of the balance amount as well as the release of the security. He submits that part payment against the final bill was made on 27.01.2017 and the withheld security was released on 16.03.2018. He asserts that the petitioner invoked the Arbitration Clause by serving a notice dated 21.01.2020, Annexure P-25 and although the pre-reference mechanism provided in Clause 25 (A) of the Arbitration Clause has been exhausted, but the respondents failed to make an appointment.

3. Upon notice by this Court, short reply has been filed on behalf of the respondent, opposing the petition by submitting that the final payment was accepted by the petitioner without any demur and he cannot be permitted to raise a claim for additional payment. He submits that the petition is barred by limitation as the petitioner has tried to raise a stale claim. He has invited the attention of the Court to Clause 25-A (vii) to submit that the petitioner is required to make a security deposit before his claim can be adjudicated.

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

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5. It is not in dispute that some payment was made in January, 2017 and the balance 25% security amount was released to the petitioner in March, 2018, though the petitioner had been pursuing with the respondents by repeatedly addressing letters. When the respondent did not respond to the communications, petitioner invoked the Arbitration Clause by sending notice, Annexure P-25, on 21.01.2020. Instant petition has been instituted on 13.01.2023 and is within the period of limitation as prescribed under Article 137 of the Limitation Act, 1963. Therefore, the objection of limitation, raised by the respondent, is rejected. As to whether the payment had been received by the petitioner voluntarily or under duress is a matter, which the learned Arbitrator would determine on the basis of the material placed before him. The Arbitrator will also examine as to whether petitioner is required to make a pre-deposit as contemplated under Clause 25 A (viii), *ibid*.

6. For the afore-going reasons, petition is allowed. Mr. Ravinder Kumar Kaushik, IAS (retired), resident of House No. 711, Sector 40-A, Chandigarh, Mobile No. 98140-01762, is nominated as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute.

7. Parties are directed to appear before the Arbitrator on 14.10.2024, at 11:00 A.M., at the address mentioned above or at any other place, time or date to be fixed by the learned Arbitrator.

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8. Fee shall be paid in accordance with the Fourth Schedule of the Act, as amended.
9. Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
10. Liberty is granted to them to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
11. Needless to mention that all the questions arising between them in this matter shall remain open for determination in the arbitral proceedings and any observation made will not be binding on the learned Arbitrator.
12. Copy of the order be sent to the appointed Arbitrator.
13. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

16.09.2024

Kamal

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