



ARB-139-2022

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

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ARB-139-2022

Date of decision:02.09.2024

DMR BUILDERS PVT. LTD.

...PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Nikhil Handu, Advocate
for the petitioner.

Mr. Anil Bansal, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

1. Instant petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short 'the Act'), for appointment of an Arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that petitioner was allotted the work of construction of Bus Depot under Bus Rapid Transit System (BRTS) at Verka Bye-pass, Amritsar, vide allotment letter dated 28.03.2016, Annexure P-2. He submits that a contract agreement was entered into between the parties and Clause 25 of the General Conditions of the agreement, Annexure P-1, contains the arbitration clause. Counsel submits that the construction work could not be completed within the time period stipulated in the agreement although the time was extended.

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He submits that upon completion of the work, respondents issued a completion certificate dated 05.02.2019, Annexure P-28. He asserts that as the respondents did not co-operate with the execution of the work, petitioner raised claims for compensation etc. and addressed communication dated 11.03.2020, Annexure P-29, to the Engineer of the work as contemplated in the arbitration clause, but the claims were rejected vide letter dated 30.07.2020, Annexure P-30. He submits that the petitioner invoked the arbitration clause by issuing notice dated 26.08.2020, Annexure P-31, but in their response dated 04.03.2021, Annexure P-32, the Chief Engineer (North) advised the petitioner to approach the Punjab Infrastructure Regulatory Authority (for short "PIRA") for appointment of an Arbitrator. Counsel submits that the petitioner sent a protest letter dated 10.03.2021, Annexure P-33, to the Chief Engineer, which was not attended to. Counsel urges that there is no provision for approaching the PIRA in the arbitration clause and in any case, the Arbitrators named in the arbitration clause are officials/ex-officials of the respondents and they are not eligible to be appointed in view of the amended provisions of the Act. It is his submission that as the contract amount is for more than Rs.10 crores, as per the arbitration clause No.25, an arbitral tribunal comprising of three members has to be appointed, but in order to save expense, a sole Arbitrator be appointed to adjudicate the disputes.

3. Upon notice by this Court, petitioner has been contested by the respondents by filing a reply, wherein it has been submitted that despite the extension of time by six months, the work was not completed within

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the extended period. By referring to the arbitration clause, State counsel has argued that the petitioner has not adhered to the time period specified in the arbitration clause inasmuch as he did not raise the claim within a period of 06 months of the completion of the work. By referring to sub-clause (viii) of Arbitration Clause 25, State counsel asserts that petitioner has to furnish “deposit-at-call” of 10% of the amount claimed.

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

5. Any clause in the agreement, which restricts the time period for raising a claim is hit by the amended provisions of Section 28 of the Indian Contract Act, 1872. This has been settled by the Supreme Court in **Grasim Industries Ltd. Versus State of Kerala, (2018) 14 SCC 265**. As to whether the petitioner is responsible for the delay in the completion of the work or the delay has occasioned on account of non-cooperation by the respondents is a matter, which is required to be adjudicated by the Arbitrator. Although, as per Clause 25 of the arbitration agreement, the Chief Engineer is competent to appoint an Arbitrator and the clause also specifies officials/ex-officials to be appointed as Arbitrators, but in view of Section 12(5) as well as Seventh Schedule of the Act, these officials are ineligible to be appointed.

6. At this stage, State counsel, upon instructions from Mr. Rajesh Kumar, Jr. Assistant, Amritsar, PWD B &R, submits that the respondents do not have any objection, in case, a sole Arbitrator is appointed to determine the dispute between the parties.

7. Accordingly, petition is allowed. Mr. Justice (Retd.) N.K. Sud, a former judge of this Court, Ambika Towers, 4th Floor, Police Line Road, Jalandhar, Mobile No.9855885555, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties.
8. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
9. Needless to mention that all the questions arising between the parties shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
10. It is clarified that this reference has been made to the learned Arbitrator subject to petitioner's complying with all the requirements of the agreement including pre-deposit, if required, subject to appropriate orders to be passed by the learned Arbitrator.
11. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) N.K. Sud.

02.09.2024

(SUVIR SEHGAL)

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JUDGE

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