



ARB-43-2024

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

(107)

ARB-43-2024

Date of decision:- 19.09.2024

Orion Security Solutions Pvt. Ltd.

... Petitioner

Versus

**Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak,
Haryana through its Registrar**

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Nikhil Sabharwal, Advocate
for the petitioner.

Mr. Akshay Kumar Dahiya, Advocate for
Mr. Ravish Kaushik, Advocate
for the respondent-University.

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 to settle the disputes between the parties.

2. Counsel for the petitioner submits that the petitioner was awarded contract for providing security services vide allotment letter dated 29.09.2015, Annexure P-2 and an agreement, Annexure P-3, was entered into between the parties on the same day. He submits that Clause 37 of the

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agreement provides for resolution of disputes by way of arbitration. Counsel asserts that initially the security services were to be provided for a period of one year, but subsequently the petitioner was granted extensions. He submits that part payments were made to the petitioner against the bills raised, but substantial payment was withheld by the respondent on the pretext that a FIR bearing No. 380 dated 24.10.2017, Annexure P-5, had been lodged under Sections 409, 420, 467, 468 and 471, IPC at Police Station PGIMS, Rohtak against an employee of the petitioner for embezzlement and forgery of documents. Counsel asserts that an application for summoning the petitioner as an additional accused was filed before the Trial Court, which was rejected by order dated 07.07.2023, Annexure P-18 and after trial, the petitioner's employee has been acquitted by judgment dated 05.04.2024, a copy of which has been placed on the record. By referring to letter dated 08.04.2019, Annexure P-10, sent by the respondent, counsel asserts that the respondent had acknowledged that balance payment was due, but called upon the petitioner to get a clearance from the Court. He submits that when the payment was not released even after acquittal, petitioner served a notice dated 06.08.2022, Annexure P-15, invoking the Arbitration Clause, which has been remained unattended.

3. Upon notice by this Court, written statement has been filed on behalf of the respondent, which is taken on record. Counsel for the respondent submits that on the basis of an audit report, petitioner was issued a show cause notice and was blacklisted vide orders dated 06.08.2021, Annexure P-11 and 21.10.2022, Annexure P-14, which are under challenge

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in a writ petition before this Court. He asserts that after September, 2017, petitioner has not submitted any bills for payment. He has made detailed reference to the audit report dated 24.12.2021, Annexure R-3, prepared by a Chartered Accountant, to submit that the petitioner has committed financial irregularities. He asserts that as per Arbitration Clause No. 37, sole Arbitrator is to be appointed by the Vice Chancellor of the respondent-University.

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

5. The tabular chart, Annexure P-7, has not been denied by the respondent and apparently there is a dispute regarding the payment, which deserves to be referred to an Arbitrator. In terms of Section 12 (5) of the Act, read with the Seventh Schedule, the Vice Chancellor of the respondent-University is ineligible to be appointed as an Arbitrator. In **SBI General Insurance Co. Ltd. Versus Krish Spinning, 2024 (3) R.C.R. (Civil) 497**, Hon'ble Supreme Court has observed that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. As a dispute persists, the prayer made in the petition deserves to be acceded to.

6. Petition is allowed.

7. Mr. Justice (Retd.) Rameshwar Singh Malik, a former Judge of this Court, resident of B-13, Mayflair Gardens, Hauz Khas, August Kranti Marg, New Delhi, Mobile No. 7837049206, is nominated as an Arbitrator to



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adjudicate the dispute between the parties, subject to compliance of statutory provisions.

8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
9. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.
10. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made will not be binding on the learned Arbitrator.
11. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Rameshwar Singh Malik.

(SUVIR SEHGAL)
JUDGE

19.09.2024

Kamal

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