

ARB-84-2023

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2024:PHHC:139201



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

(245)

ARB-84-2023

Date of decision:- 23.10.2024

M/s KBM Infrastructure Pvt. Ltd.

... Petitioner

Versus

Heera Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajesh Goswami, Advocate and
Ms. Rashi Goswami, Advocate for the petitioner.

Mr. Kunal Dawar, Advocate and
Ms. Shruti Mandhotra, Advocate for the respondents.

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 Arbitration Act”), petitioner has approached this Court for appointment of Arbitrators in term of Clause 47 of the Collaboration/Joint Venture Agreement dated 17.06.2011, Annexure P-1.

2. Counsel for the petitioner submits that a Collaboration/Joint Venture Agreement was entered into between the petitioner and the respondents on 17.06.2011, Annexure P-1, for development of land for commercial/residential complex. An amount of Rs.11,00,000/- was paid to the respondents. He submits that in terms of the agreement, the petitioner was to receive 65% share, out of the total sale proceeds of the saleable areas in the complex to be developed by the petitioner and the balance 35% was to be paid to the respondents. He submits that vide application dated



09.02.2011, Annexure P-2, petitioner applied to the Directorate Town & Country Planning Department, Government of Haryana for grant of a license and deposited the requisite fee. By referring to communications, Annexures P-3 to P-8, he submits that the matter remained in communication till June, 2021. He submits that respondents cancelled the agreement by serving a legal notice dated 02.06.2009, Annexure P-9, and the petitioner sent a reply to the notice, but as a dispute had arisen between the parties, by legal notice dated 14.10.2022, Annexure P-12, petitioner invoked the arbitration Clause 47. He submits that a reply dated 21.10.2022, Annexure P-13, was received, but the respondents did not accede to the appointment of an Arbitrator.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that the agreement expired in 2017 and the petition is barred by time. By making a reference to Clause 4 of the agreement, Annexure P-1, counsel for the respondents submits that the entire construction work was to be completed within a period of six years from the date of agreement and it was stipulated that in case the petitioner fails to start the construction period within the aforesaid period, the agreement shall be deemed to have expired and the advance given by the petitioner would be forfeited. Counsel for the respondents urges that by invoking of the Arbitration Clause, petitioner has sought to revive a stale claim. He has made a reference to the judgment passed by the Supreme Court in *M/s B and T AG Versus Ministry of Defence, 2024 (5) SCC 358* as well as the judgment of the Allahabad High Court in *M/s Wise Industrial Park Ltd. Versus Uttar Pradesh State*



Industrial Development Corporation Ltd. and another, 2020 (143) ALR 580.

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

5. The agreement, Annexure P-1, the chain of correspondence, service of notice by the petitioner as well as the respondents are not disputed. The only question to be determined is as to what is the date on which the cause of action has arisen to the petitioner. No doubt the agreement, Annexure P-1, was entered into between the parties in June, 2011 and in terms of the agreement, the construction work was to be completed within six years, otherwise the agreement would have expired. But, by virtue of notice dated 02.06.2020, Annexure P-9, respondents have cancelled the agreement. Reference, in particular, deserves to be made to the concluding paragraph of the notice, wherein the respondents have categorically stated that the agreement dated 17.06.2011 has become "*infructuous/cancelled with immediate effect due to non performance of your part within the stipulated period*". This Court is, therefore, of the view that the cause of action accrued to the petitioner on 02.06.2020 when the agreement was cancelled by the respondents. Notice, Annexure P-12, invoking the Arbitration Clause has been served in October, 2022 is well within the prescribed period of limitation.

6. In a recent decision in **SBI General Insurance Co. Ltd. Versus Krish Spinning, 2024 (3) RCR (Civil) 497**, Supreme Court has held that the referral Court has to restrict the examination to the questions as to whether there exists an arbitration agreement between the parties and whether the



petition has been filed under Section 11 of the Arbitration Act within the period of three years of invoking the Arbitration Clause. As answer to both the questions is positive, this Court is of the opinion that dispute has to be referred to an Arbitrator for determination. The prayer made in the petition, therefore, deserves acceptance.

7. At this stage, counsel for the petitioner has made a request that although Clause 47 of the agreement provides for an Arbitral Tribunal, comprising of three members, but in order to save time and expense, a former Judge of the Supreme Court be appointed to adjudicate the dispute between the parties.

8. His request deserves to be accepted.

9. Accordingly, petition is allowed. Mr. Justice (Retd.) Acarsh Kumar Goel, a former Judge of the Supreme Court, resident of C-2/24, Safdajung Development Area, New Delhi-110016, Mobile No. 9910213040, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.

10. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

11. Parties will be at liberty to raise all claims, counter claims, defences, pleas etc., including that of limitation, before the learned Arbitrator.

12. 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 hereinabove made will not be binding on



the learned Arbitrator.

13. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Adarsh Kumar Goel.

23.10.2024

Kamal

(SUVIR SEHGA) JUDGE

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