

Neutral Citation No. **2024:PHHC:017138**

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

110

ARB-98-2022 (O&M)
Date of Decision:07.02.2024

Raj Kamal Builders

... Petitioner

Vs

General Manager (Engineering)
Northern Railway and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Shobit Phutela, Advocate for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Instant petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitral Tribunal consisting of a sole Arbitrator to adjudicate the dispute between the parties arising out of contract agreement, Annexure P-2, for execution of work namely ‘Zone No.4/2017-18/ASR, for all residential buildings in Colony No.1, 2 & 3 at ASR under SSE/W/ML/ASR under DEN/ASR’ allotted to the petitioner vide allotment letter dated 08.12.2017, Annexure P-1.

2. Upon notice, petition has been contested by the respondents by filing a written statement, wherein they have admitted the

agreement between the parties as well as notice invoking the arbitration clause. In addition, it had been pleaded that the petitioner had entered into a supplementary agreement on 12.09.2019, Annexure R-2, whereby it had been agreed between the parties that the arbitration clause shall stand rescinded; which has been suppressed.

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

4. Supplementary agreement, Annexure R-2 entered into and duly signed by the parties, deserves to be noticed and is reproduced as under:-

"Articles of agreement made this day between the DEN-III, DRM office Ferozepur, Punjab on behalf of President of India acting through the Railway Administration herein after called the Railway on the one part and Contractor M/s Raj Kamal Builders, 46 Gokal Nagar, Majitha Road, Amritsar (Punjab) on the other part.

Whereas the party hereto of the other part executed an agreement No. 833/ASR Dt. 24.01.18 with the party hereto of the first part being for "Ordinary repair & maintenance as well as new works, addition & alterations to existing structure and emergent work in Zone No.4(2017-18)/ASR, for all residential buildings in colony No.1, 2 & 3 at ASR under SSE/W/ML/ASR under DEN/ASR" Herein after called the 'Principal Agreement'.

And whereas it was agreed by and between the parties hereto that the works would be completed by the party hereto of the second part on 30.06.2018 Date last extended and whereas the

party hereto of the second part has executed the work to the entire satisfaction of the party hereto of the first part. And whereas the party hereto of the first party already made payment of the party hereto of the second part diverse sums from time to time aggregating to Rs. 42,74,029/- including the Last final bill bearing no. FCC- 1/32/19-ML/414/ASR dated. 16.11.18 (the receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all his/its claims under the principal agreement.

And whereas the party hereto of the second part have received further sum of Rs. 42,74,029/- Through the last final bill bearing No. FCC- 1/32/19-ML/414/ASR dt. 16.11.2018 (The receipt of which is hereby acknowledged by the party thereto of the second part) from the party hereto the first part in full and final settlement of all his/its disputed claims under principal agreement.

Now, it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the party hereto of the second part against all outstanding dues and claims for, all works done under the aforesaid Principal Agreement including/excluding the security deposit the party hereto of the second part have no further dues of claims against the party hereto of the first part under the said principal Agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal

Agreement.

It is further agreed and understood by and between the parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clause.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes."

5. A perusal thereof shows that after having received a payment of Rs.42,74,029/- in full and final settlement of the claims, petitioner had entered into this supplementary agreement, wherein he had *inter alia* discharged the respondents and rescinded the terms and conditions including the arbitration clause. For reasons best known, the petitioner has not disclosed the supplementary agreement in the petition. Petition is supported with an affidavit wherein petitioner has declared that all the facts given therein are true and correct and nothing has been concealed therefrom.

6. In the rejoinder filed by the petitioner, the supplementary agreement between the parties has not been disputed. No explanation whatsoever, is forthcoming as to the reasons why the supplementary agreement was concealed from this Court. It is evident that the petitioner has approached this court with tainted hands. He has suppressed material facts which have a direct bearing on the merits of

his claim and is therefore not entitled to the prayer made in the petition.

7. Petition is, therefore, dismissed.

07.02.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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