

ARB-141-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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ARB-141-2022 (O & M)

Date of decision:30.04.2024

M/S RAJESH GOYAL

...PETITIONER

VS.

NAFREF ENGINEERING PVT. LTD.

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vaibhav Mittal, Advocate
for the petitioner.

Mr. S.S. Bawa, Advocate
for the respondent.

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.

2. Counsel for the petitioner submits that an agreement dated 01.06.2015, Annexure P-1, for addition/alteration to certain sheds and allied services at AFT STN Gurgaon was entered into between the parties. He submits that petitioner completed the work in July, 2017, and the last payment was made on 05.08.2017. He submits that as some payment was withheld, petitioner served a legal notice, Annexure P-2, and when it did not yield any result, legal notice dated 20.01.2021, Annexure P-3, was issued, invoking the arbitration clause. Counsel submits that the respondent rejected the demand for appointment of an Arbitrator vide their reply dated 22.02.2021, Annexure P-4.

3. Upon notice, response has been filed by the respondent, contesting the petition by taking a stand that there is no dispute between the parties and the claim, if any, is barred by time.

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

5. Supreme Court in **M/s Arif Azim Co. Ltd. Versus Aptech Limited 2024 SCC Online SC 215** held that the period from 15.03.2020 to 28.02.2022 has to be excluded for computation of limitation and the balance limitation left after 15.03.2020 would become available on 01.03.2022. Undisputedly, last payment was made to the petitioner in August, 2017, and he served a legal notice on 20.01.2021, Annexure P-3, invoking the arbitration clause before instituting the present petition on 30.03.2022. Petitioner was left with limitation period on 15.03.2020 and he has invoked the arbitration clause during the Covid period. Consequently, the claim cannot be said to be time barred.

6. In **Extra Marks Education India Private Limited Versus M/s DIS Chain of Institutions and another 2022 (4) RCR (Civil) 991**, a Co-ordinate Bench of this Court observed that the issue of limitation, which concerns the admissibility of the claim has to be decided by the Arbitrator. Therefore, there is no force in the argument of the counsel for the respondent that the claim is *ex facie* barred by limitation. The judgment in **Rashtriya Ispat Nigam Limited Rep Versus M/s SENCON Systems Private Limited 2023 AIR (Andhra Pradesh) 119** relied upon by the respondent is not applicable to the facts of the case.

7. Accordingly, petition is allowed. Mr. Justice (Retd.) Bharat Bhushan Parsoon, H.No. 235, Sector 16, Chandigarh, New Address #154, Sector 35-A, Chd, Mobile No.09416393399/09999688558, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties.
8. Parties are directed to appear before the learned Arbitrator on a day, time and place to be communicated by him.
9. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the 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 hereinabove will not be binding on the learned Arbitrator.
11. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) Bharat Bhushan Parsoon.

30.04.2024
sheetal

(SUVIR SEHGAL)
JUDGE

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