



ARB-146-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB-146-2023 (O&M)
Date of Decision: 29.08.2024

M/s Uppal Builders Private Limited

...Applicant

Versus

M/s Deep Nursing Home and Children Hospital

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. L.B. Rai, Advocate for the applicant

Mr. Anand Chhiber, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.
2. The applicant was issued work order (LOI) vide letter dated 20.08.2013 (Annexure P-2) by the respondent. Thereafter, the parties executed Memorandum of Agreement dated 25.09.2013 (Annexure P-3). As per Clause 2 of the agreement, LOI formed part of aforesaid agreement. There is an arbitration clause in the LOI. The issuance of work order (LOI), execution of agreement, arbitration clause in LOI and service of notice under Section 21 of 1996 Act is not disputed.
3. Mr. Anand Chhiber, Senior Advocate submits that claim of the applicant is time barred. As per judgments of Supreme Court in *M/s Geo*



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Millers and Co. Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited, 2020 (14) SCC 643 and *M/s B and T AG v. Ministry of Defence, 2023 AIR (Supreme Court) 2731*, the Court should not make appointment of an Arbitrator where claim is *prima facie* time barred because deadwood should not be rekindled. It creates an undesired burden upon the parties. The LOI was containing arbitration clause but there was no arbitration clause in the memorandum of agreement.

4. Learned counsel for the applicant submits that LOI was part of memorandum of agreement, thus, it cannot be countenanced that there was no arbitration clause. The contract was to be executed within 7 months whereas on account of lapse on the part of respondent, it could be executed in 57 months. The respondent made last payment on 26.08.2019, thus, date of contract or memorandum of agreement cannot be relied upon to hold that claim is hopelessly time barred.

5. In the wake of arguments of both sides, it cannot be concluded that claim is hopelessly barred by limitation. This issue needs to be examined by the Arbitrator.

6. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

7. Mr. Justice Gurdev Singh, Retired Judge of this Court, residing at House No. 113, Sector 10-A, Chandigarh Mobile No.8556009312 is hereby

appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

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

9. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

10. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.

11. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas including issue of limitation before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

12. Pending application(s), if any, shall stand disposed of.

13. A request letter along with copy of this order be sent to Mr. Justice Gurdev Singh.

(JAGMOHAN BANSAL)

JUDGE

29.08.2024

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No