



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB-275 of 2022 (O&M)
Date of decision: 27.05.2024

HARISH GOPALANI AND ANOTHER

..PETITIONERS

VS.

M/S ADVANCE INDIA PROJECTS LIMITED

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amandeep Singh, Advocate
for Mr. Adarsh Rai, Advocate for the petitioners.

Mr. Sandeep Verma, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for short "the Act" the petitioner has approached this Court for appointment of sole Arbitrator.

2. Counsel for the petitioners submits that an agreement dated 07.09.2017, (Annexure A) was entered into between the petitioners and respondent, for purchase of a commercial unit in a project by the name of "AIPL Joy Street", promoted by the respondent. He submits that Clause 56 of the Agreement provides for resolution of disputes through the medium of Arbitration. Counsel asserts that some disputes arose between the parties and the petitioners served a notice dated 09.08.2021(Annexure F) invoking the arbitration clause to which the respondent did not respond.

3. Upon notice by this Court, respondent has contested the petition by filing a reply wherein it has been *inter alia* submitted that the petitioners failed to make the full payment under the agreement which was terminated vide



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possession was given to the petitioner vide letter dated 10.10.2020 (Annexure R-5) but as the petitioner had not make the full payment, they never came forward to accept the possession. Counsel for the respondent has argued that as the agreement stood terminated, arbitration clause cannot ben invoked. It is also his argument that in terms of the arbitration clause, the Arbitrator has to be appointed by the respondent.

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

5. It has been held by the Supreme Court in **M/s Reva Electric Car Company Pvt. Ltd. V/s M/s Green Mobil 2012 (2) SCC 93**, that the arbitration clause is independent of the main agreement and even if the main agreement is terminated, arbitration clause can be enforced. Therefore, the first argument raised by counsel for the respondent is rejected. In so far as the second submission is concerned, suffice is to say that under the scheme of the Act, the respondent can appoint an Arbitrator within 30 days of the service of the notice. Once the respondent fails to appoint an Arbitrator within the said period, jurisdiction vests in this Court. For the afore-going reasons, the prayer made in the petition deserves to be accepted.

6. Petition is allowed. Mr. Justice (Retd.) Parkash Singh Teji, a former Judge of Delhi High Court, R/o B-27, First Floor, Defence Colony, New Delhi-110024, (M-9910384615) is requested to act as a sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute between the parties.

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



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8. Liberty is given to the parties to make a request to the learned Arbitrator to hold the proceedings through the medium of the Video Conferencing or at Gurgaon.

9. 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.

10.. A request letter alongwith a copy of this order be sent to Justice (Retd.) Parkash Singh Teji.

May 27, 2024
Poonam Sharma

(SUVIR SEHGAL)
JUDGE

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