

*ARB-244-2024 (O&M)*

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

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ARB-244-2024 (O&M)

Date of Decision:11.12.2024

M/S PS ASSOCIATES

... Petitioner

Vs.

HARYANA URBAN DEVELOPMENT AUTHORITY

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Manu Jain, Advocate (through V.C.)
Mr. R.Kartikeya, Advocate
Ms. Ishita Pandey, Advocate
Mr. Jatinder Khurana, Advocate for the petitioner.

Mr. P.S. Rana, Advocate and
Mr. G.S. Rana, Advocate for the respondent.

SUVIR SEHGAL J. (ORAL)

1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') for appointment of an independent Arbitrator.

2. Counsel for the petitioner submits that the petitioner submitted a bid pursuant to a tender floated by the respondent, which was accepted and a contract dated 21.07.2014, Annexure P-3, was entered into between the parties for construction of Town Planning Building in Sector 18-A, Chandigarh. He states that the construction work was to be completed by 05.02.2016 and the time period for its completion was extended up to 31.07.2018, but it was completed on 16.08.2021 as the respondent failed to fulfill the contractual



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obligations. By communication dated 20.12.2023, Annexure P-4, petitioner raised claims before the Executive Engineer of the work as provided in Arbitration Clause 25-A and when he did not respond within the stipulated period, a notice dated 22.02.2024, Annexure P-5, was served upon the respondent invoking the arbitration clause.

3. Petition has been contested by the respondent by filing a reply in Court today, which is taken on record. Mr. Rana, counsel for the respondent submits that sub-clause (vii) of Arbitration Clause 25-A provides for a pre-deposit of security amount, which is mandatory. He submits that there has been a delay in raising the claim.

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

5. Undisputedly, the contract between the parties has an arbitration clause. From the material on the record, it is apparent that there are some differences between the parties, which deserve to be resolved through the medium of arbitration. Insofar as pre-deposit is concerned, Supreme Court in **Lombardi Engineering Limited Versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341**, has held that vague condition of pre-deposit in an arbitration clause is arbitrary and deserves to be ignored while making a reference to an Arbitrator. The question of limitation is required to be gone into the Arbitration. Accordingly, the prayer made in the petition deserves to be acceded to.

6. Accordingly, petition is allowed. Mr. Justice (Retd.) Virender Singh, former Chief Justice, Kothi No. 233, Sector 11-A,



Chandigarh, Mobile No. 94311-15601 is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

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

8. Liberty is granted to the parties to request the learned Arbitrator to treat the issue of pre-deposit of security amount, as a preliminary issue.

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

10. A request letter along with a copy of this order be sent to Mr. Chief Justice (Retd.) Virender Singh.

11. Pending application, if any, stands disposed of.

11.12.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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