

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(106-1)

ARB-449-2021

Date of decision:- 02.02.2024

Ram Avtar Gupta

... Petitioner

Versus

Haryana State Warehousing Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Nikhil Handu, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the dispute between the parties.
2. Upon notice, respondents have filed a reply contesting the petition primarily raising two objections. It has been submitted in the response that the cause as well as the claim is barred by time and that the petitioner had submitted an affidavit stating that he will not approach the Arbitrator, in case, the security amount is released to him.
3. I have heard counsel for the parties and considered their respective submissions.

4. Perusal of the record shows that the petitioner was awarded a contract for construction of 12700 metrics capacity godowns (except roofing), CC Road & E.L. Work at SWH, Hansi, Haryana, Annexure P-2, on 28.10.2010 at an estimated cost of Rs.3,15,07,991/-. The work was to be completed within 180 days, but it was actually completed on 11.08.2011. It has been pleaded that the payment of the running bills was not made on time and eventually on 20.02.2017, respondents made the final payment and released security. Thereafter, the petitioner addressed letter dated 02.08.2017, Annexure P-7, to the Executive Engineer, Incharge of the work for extra payment, which was followed by a number of letters, but the claim was not accepted by the Executive Engineer, although, all the letters were duly responded to. Notice invoking the Arbitration Clause 25 A was issued on 23.03.2020, Annexure P-18, but the respondents rejected the claim for appointment of an Arbitrator. Petitioner, thereafter, filed the instant petition in August, 2021.

5. In so far as the first objection raised by the respondents is concerned, narration of dates given above show that the final payment was made in February, 2017, thereafter, the petitioner availed the pre-reference mechanism as provided in the Arbitration Clause and then invoked the Arbitration Clause before instituting the present petition. The objection regarding the cause and claim being barred by time is, therefore, rejected.

6. In so far as the second objection raised by the respondents is concerned, the issue stands settled by the Apex Court in ***Union of India Versus Parmar Construction Company, (2019) 15 SCC 682***, wherein it has been held that whether an affidavit of no claim or an affidavit giving up right to raise a dispute, has been given voluntary or under coercion are

matters, which would be adjudicated by the Arbitrator.

7. In view of the above discussion, this Court is of the view that the dispute deserves to be referred to an Arbitrator for resolution.
8. Accordingly, petition is allowed. Mr. Justice M.M.S. Bedi, H.No. 2152, Sector 44-C, Chandigarh-160047, a former Judge of this Court, is appointed as the sole Arbitrator to resolve 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.
9. The date, time and place of the arbitration proceedings would be fixed and communicated by the learned Arbitrator at his convenience. Liberty is given to the parties to raise all the pleas before the learned Arbitrator.
10. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.
11. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
12. Copy of the order be sent to the appointed Arbitrator.

(SUVIR SEHGAL)

JUDGE

02.02.2024

Kamal

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