



ARB-300-2023

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

(223)

ARB-300-2023

Date of decision:- 02.08.2024

M/s Girdhari Lal and son

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajesh Kumar Girdhar, Advocate for the petitioner.

Mr. Anil Bansal, DAG, Punjab for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant petition filed under Section 11 read with Section 12 of the Arbitration and Conciliation Act, 1996 (for short “the Act”), petitioner has approached this Court for appointment of an independent Arbitrator to decide the claim of the petitioner.
2. Counsel for the petitioner submits that by letter of acceptance dated 28.06.2019, Annexure A-2, petitioner was allotted the work of Design, Construction, Operation and Maintenance of Tented City, Main Pandal & Stage for various ceremonies and Temporary Shops at Sultanpur Lodhi for a contract price of Rs.52.83 crores. He submits that the scope of the work was enhanced and the work was completed on 20.11.2019 within the time extended by the respondents. He submits that a completion certificate dated 11.05.2020, Annexure A-8, was issued, but the respondents failed to release the complete payment and an amount of more than Rs.5.28



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crores remained pending. He submits that some penalty was imposed upon the petitioner, which was waived by communication dated 10.11.2020, Annexure A-12. Counsel asserts that in terms of Arbitration Clause 25 of the General Conditions of Contract, Annexure A-1, petitioner raised a dispute before the Executive Engineer vide letter dated 13.09.2021, Annexure A-15, which was rejected by communication dated 12.11.2021, Annexure A-16. He submits that after exhausting the pre-reference mechanism, petitioner invoked the Arbitration Clause by notice dated 17.11.2021, Annexure A-17, which was also declined by the respondents by their response dated 19.07.2022, Annexure A-19.

3. Upon notice of the petition, response has been filed by the respondents contesting the petition. State counsel submits that the demand raised by the petitioner for appointment of an Arbitrator is not within the period specified in the Arbitration Clause and is time barred.

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

5. Any clause in the contract, which restricts the time period for raising a claim, has been held to be violative of Section 28 of the Contract Act, 1872 by the Supreme Court in **Grasim Industries Ltd. Versus State of Kerala, (2018) 14 SCC 265**. Similar view has been taken by this Court in **Extra Marks Education India Pvt. Ltd. Versus M/s DIS Chain of Institutions and another, 2022 (4) R.C.R. (Civil) 991** and also in **ARB-142-2023** titled as ***Umesh Kumar Versus Punjab State Power Corporation Ltd. and another***, decided on 04.07.2024.



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6. In view of the above settled legal position, the stand taken by the respondents is rejected and the prayer made in the petition is acceded to.
7. Resultantly, petition is allowed. Mr. Justice (Retd.) Viney Mittal, a former Judge of this Court, resident of House No. 115, Sector 16-A, Chandigarh, Mobile No. 9988100579 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.
8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
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 the order be sent to Mr. Justice (Retd.) Viney Mittal.

02.08.2024
Kamal

(SUVIR SEHGAL)
JUDGE

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