

ARB-549-2021(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-549-2021(O&M)

Date of decision:-29.04.2024

M/s Brij Gopal Construction Co.Pvt. Ltd.

...Petitioner

Versus

Housing Board Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Suvir Kumar, Advocate
for the petitioner.

Mr.Deepak Balyan, Advocate
for respondent.

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”) read with Scheme of Appointment of Arbitrators by the Chief Justice of Punjab & Haryana High Court, 2003, petitioner has approached this Court for appointment of an Arbitrator to adjudicate the dispute between the parties.

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2. Counsel for the petitioner submits that the petitioner was awarded work of construction of EWS flats for BPL families and contract was awarded to the petitioner vide communication dated 13.04.2011, Annexure P2. Counsel submits that as some payments were withheld after the completion of work, a dispute arose between the parties and the petitioner served a legal notice dated 20.02.2019, Annexure P6, invoking the arbitration clause. Counsel asserts that initially, by response dated 13.03.2019, Annexure P7, respondent rejected the request, however, pursuant to a subsequent legal notice dated 13.04.2019, Annexure P8, respondents informed the petitioner by its letter dated 07.06.2019, Annexure P9, to make a pre-deposit in terms of Clause 33 (7) of the contract agreement. Counsel submits that the petitioner deposited the requisite amount and by order dated 13.10.2021, Annexure P11, respondents appointed a retired Engineer-in-Chief as an Arbitrator. Counsel further submits that the petitioner immediately protested to this appointment as it was hit by Section 12 (5-A) of the Act vide its protest letter, Annexure P12.

3. Upon notice, a short reply has been filed by the respondent opposing the petition primarily on the ground that the request is time barred. Another objection raised by the respondent is that that the Arbitrator already stands appointed.

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

5. It does not lie in the mouth of the respondent to oppose the petition as they had made an appointment of the Arbitrator by their communication, Annexure P11. However, the Arbitrator has been

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appointed by them unilaterally and his appointment is void ab initio as has been held by the Supreme Court in **Bharat Broadband Network Limited Versus United Telecoms Limited, (2019) 5 SCC 755** and **TRF Ltd. Versus Energo Engineering Projects Ltd., (2017) 8 SCC 377.**

Therefore, both the objections raised by the respondent are rejected.

6. Petition is allowed. Mr. Justice (Retd.) Vijay. K. Jhanji, a former Judge of this Court, r/o # 1150, Sector-15, Chandigarh, M: 9810380917 is requested to act 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 the date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

8. Parties will be at liberty to raise all the pleas/defences before the Arbitrator.

9. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

10. A request letter be sent to Mr. Justice (Retd.) Vijay. K. Jhanji alongwith a copy of this order.

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

(SUVIR SEHGAL)
JUDGE

29.04.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No