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

ARB-414-2022

Date of decision:-11.09.2024

M/s Girdhari Lal Aggarwal, Contractor Pvt. Ltd.

...Petitioner

Versus

Haryana Shehri Vikas Pradhikaran and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr.Nikhil Handu, Advocate
for the petitioner.Mr.Arvind Seth, 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 disputes between the parties.

2. Counsel for the petitioner submits that the petitioner was entrusted the work of designing, construction, testing, commissioning, operation and maintenance of water works at Sector 34, Rohtak vide allotment letter dated 29.07.2013, Annexure P3. He submits that the work was to be completed within a period of 18 months, however,



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because of the hindrances created by the respondent, there was a delay in the execution of the work, which was completed on 30.08.2016 and a completion certificate, dated 01.05.2018, Annexure P20, was issued. Counsel submits that the petitioner raised a final bill on 31.03.2017 and part payment was released on 18.08.2017. Counsel asserts that in terms of the arbitration Clause 25-A, petitioner raised a claim of Rs.7.88 Crores (approx.) before the Executive Engineer Incharge vide letter dated 02.03.2020, Annexure P21. However, the claim was declined on 07.05.2020, Annexure P22, on the ground that it has been submitted beyond the time period specified in the arbitration clause. Counsel asserts that the petitioner invoked the arbitration clause by serving a notice dated 04.06.2020, Annexure P25, upon the Chief Engineer wherein it was submitted that as the arbitrator named in the arbitration clause is ineligible to be appointed under the amended provisions of the Act, and an independent arbitrator be appointed. Petitioner simultaneously proposed the name of an arbitrator, which was not accepted by the respondents, who vide response dated 22.06.2020, Annexure P29, sent a panel of three names to the petitioner. Counsel submits that the matter remained in communication, however, arbitrator was not appointed.

3. Upon notice by this Court, respondents have filed a short reply wherein it has been submitted that the petitioner has not adhered to the time schedule mentioned in the arbitration clause. A stand has been taken that the petition is barred by time and the petitioner has been made the full and final payment. By referring to Clause 25A (7), counsel for



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the respondents submits that the petitioner is mandatorily required to make pre deposit before the dispute can be referred to an arbitrator.

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

5. It has been settled by the Supreme Court in **Grasim Industries Ltd. Versus State of Kerela, 2018 (4) SCC 265** that any condition in the arbitration clause, which restricts the time period for raising the claim is hit by Section 28 of the Indian Contract Act, 1872. As to whether entire payment has been made and received by the petitioner voluntarily or under duress, is a matter, which would be gone into by the Arbitrator. A reference to the factual matrix reproduced in the preceding paragraph shows that the petitioner had raised the claim within the period of limitation as provided under the Limitation Act, 1963 and interpreted by the Supreme Court in **Arif Azim Company Limited Versus Aptech Limited (2024) 5 SCC 313**. Insofar the pre-deposit is concerned, the same will be determined by the learned Arbitrator.

6. For the foregoing reasons, petition is allowed. Mr. Justice (Retd.) Lalit Batra, a former Judge of this Court, r/o # 116, Sector 24, Chandigarh is nominated 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



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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.) Lalit Batra alongwith a copy of this order.

11.09.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(SUVIR SEHGAL)
JUDGE