



ARB-345-2019 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

233

ARB-345-2019 (O&M)
Date of Decision:05.09.2024

Sidhartha Construction Co.

... Petitioner

Vs

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Nikhil Handu, Advocate and
Mr. Amit Gupta, Advocate for the petitioner.

Mr. Anil Bansal, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

- 1.. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an Arbitrator to adjudicate the dispute between the parties.
2. Counsel for the petitioner submits that the petitioner was awarded a construction work by virtue of allotment letter dated 13.11.2013, Annexure P-2. He submits that clause 25, of the General Conditions of the Contract, Annexure P-1, which forms a part of the contract agreement entered into between the parties contains an

*ARB-345-2019 (O&M)*

-2-

arbitration clause. He submits that work was to be completed within a period of eight months but due to non-cooperation of the respondents, there was a delay and work was completed on 30.06.2015. He submits that the 19th and final bill for payment was prepared on 11.10.2016 and some payments were released but since all his claims were not settled, petitioner submitted a request letter dated 15.03.2019, Annexure P-11, to the Engineer in terms of the arbitration clause, which was not attended to. He asserts that arbitration clause was invoked by serving notice dated 21.05.2019, Annexure P-12 on the Superintending Engineer and simultaneously by a protest letter, sent on the same day, to the Chief Engineer, petitioner objected to the appointment of a serving official as an Arbitrator. He submits that a response was received by a communication dated 14.05.2019, Annexure P-14, whereby the respondents rejected the claims raised by the petitioner.

3. Upon notice, reply by way of an affidavit has been filed on behalf of respondents No. 1 to 3, which is taken on record. By referring to the stand taken in the reply, State counsel submits that the petitioner has not adhered to the time period specified in the arbitration clause in as much as there is a delay in raising the claim before the Executive Engineer as well as in serving a notice for appointment of an Arbitrator. Still further, he submits that full and final payment has been made to the petitioner and he cannot raise the claim for additional payment. Yet another objection raised by the



ARB-345-2019 (O&M)

-3-

respondents is that the petitioner is required to make a deposit-at-call of 10% of the amount claimed before the matter can be referred to an Arbitrator.

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

5. Any condition in the arbitration clause which restricts the time period for raising a claim is hit by the amended provision of Section 28 of the Indian Contract Act, 1872, as has been held by the Supreme Court in *Grasim Industries Ltd. Versus State of Kerala, 2018 (14) SCC 265*. As to whether entire payment has been made to the petitioner or some amount is still due, is a matter, which is required to be determined by the Arbitrator. This Court, therefore, does not have any hesitation in acceding to the prayer made in the petition.

6. Accordingly, petition is allowed.

7. Ms. Justice (Retd.) Navita Singh, former Judge of Punjab and Haryana High Court, Flat No. 309, Jaishree Tower, Swastik Vihar, Mansa Devi Complex, Sector 5, Panchkula, Mobile No.8558809911, is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

8. As an objection has been raised by the respondents that a petitioner is required to make a deposit-at-call, this amount be deposited, if required, subject to orders to be passed in this regard, by



the learned Arbitrator.

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

10. 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.

11. A request letter along with a copy of this order be sent to Ms. Justice (Retd.) Navita Singh.

05.09.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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