



ARB-410-2023

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

(229)

ARB-410-2023

Date of decision:- 02.08.2024

ASC Builders Pvt. Ltd.

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sarthak Gupta, 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 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”), petitioner has approached this Court for appointment of an Arbitrator.
2. Counsel for the petitioner submits that by letter dated 06.08.2019, Annexure P-1, petitioner was allotted work of Proposed Ring Road Phase-I from NH-7 to ITI Chowk, Mansa Road, Bathinda and a contract agreement was entered into between the parties. He submits that Clause 25 of General Conditions of Contract, Annexure P-2, provides for dispute resolution mechanism through the medium of arbitration. He submits that some disputes arose between the parties and in terms of the Arbitration Clause,



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petitioner by communication dated 10.04.2023, Annexure P-3, petitioner approached the Engineer of the work, who vide response dated 07.06.2023, Annexure P-4, rejected the claims as being time barred. Counsel submits that as the pre-reference mechanism stood exhausted, petitioner invoked the Arbitration Clause by serving notice dated 07.07.2023, Annexure P-5, which has remained unattended.

3. Upon notice by this Court, reply has been filed on behalf of respondents No.1 to 3 opposing the petition. State counsel submits that the petitioner had raised the claim before the Engineer of the work as well as demanded the appointment of an Arbitrator after the time period specified in the Arbitration Clause had expired.

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

5. Any stipulation in the Arbitration Clause, which restricts the time period for raising the claim, is hit by Section 28 of the Contract Act, 1872. It has been so held by the Supreme Court in **Grasim Industries Ltd. Versus State of Kerala, (2018) 14 SCC 265** and has been followed by this Court in **ARB-326-2023** titled as “**Ram Kumar Contractor Private Limited Versus State of Punjab and others**”, decided on 18.07.2024.

6. From the documents on the record, it is apparent that there is a dispute between the parties, which deserves to be referred to an Arbitrator.

7. At this stage, counsel for the petitioner submits that although the agreement provides for appointment of an Arbitral Tribunal, comprising of three members, but in order to save expense, a sole Arbitrator be appointed.



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8. Request of counsel for the petitioner has been considered.
9. As the respondents have failed to accede to the demand for appointment of the Arbitrator, this Court accepts to the request made by the counsel for the petitioner.
10. Accordingly, petition is allowed. Chief Justice (Retd.) M.M. Kumar, resident of House No. 79, Sector 16-A, Chandigarh, Mobile No. 9888824752 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.
11. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
12. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
13. 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.
14. A request letter alongwith a copy of the order be sent to Chief Justice (Retd.) M.M.Kumar.

(SUVIR SEHGAL)
JUDGE

02.08.2024

Kamal

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