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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-487-2023

Date of decision:-12.12.2024

M/s Satish Aggarwal & Company (JV)

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sarthak Gupta, Advocate
for the petitioner.

Mr. Malkiat Singh, DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

1. This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") for appointment of an arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that an agreement dated 29.11.2016, Annexure P1, was entered into between the parties for Widening/Strengthening of a portion of Mukerian Talwara Mubarikpur Road under the CRF Scheme. Some differences arose between the parties, which were referred to respondent No.3 for settlement vide letter

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dated 07.11.2022, Annexure P2. Counsel asserts that the reference was rejected by respondent No.3 vide communication dated 03.01.2023, Annexure P3, and by letter dated 19.01.2023, Annexure P4, petitioner requested respondent No.2 to appoint a Dispute Review Board, but the Board was never constituted. He states that after the expiry of the period specified in Clause 25 of the agreement, petitioner invoked the arbitration clause by letter dated 03.07.2023, Annexure P5, which has remained unattended.

3. Upon notice by this Court, petition has been resisted by the respondents by filing a written statement by way of affidavit of Executive Engineer, Construction Division, PWD (B&R), Branch, Mukerian along with receipt dated 04.11.2024 depicting deposit of cost of Rs.10,000/- imposed by this Court. By making a reference to the affidavit, State counsel submits that there was a delay on the part of the petitioner in the conclusion of the work and instead of completing it within the stipulated period of 18 months, work was completed after 37 months. He asserts that the petitioner stopped the work at the site and shifted some of the machinery to some other project and even failed to remove the defects despite being specifically pointed out. He urges that there is a delay in the institution of the petition and has invited the attention of the Court to Clause 25.2 of the contract agreement. State counsel has taken a stand that the entire amount due, has been disbursed to the petitioner.

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



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5. It is evident from the documents placed on the record as well as the rival stand taken by the parties that a dispute exists between the parties. As the agreement contains an arbitration clause, the matter requires to be determined by an Arbitrator. Insofar as the objection of limitation raised by the respondent is concerned, it deserves to be noticed that the time period for raising the dispute has been specified as 28 days in Clause 25.2 of the contract agreement. Such restricted time period in the arbitration clause is hit by amended provision of Section 28 of the Indian Contract Act, 1872. Reference can be made to the judgment of Supreme Court in *Grasim Industries Ltd. Versus State of Kerala, 2018 (14) SCC 265*. As to whether the entire payment has been made, is a subject matter to be considered by the Arbitrator.

6. For the reasons foregoing, prayer made in the petition deserves to be acceded to. Accordingly, petition is allowed. Mr. Justice (Retd.) Ajay Kumar Mittal, a former Chief Justice, resident of H. No. 26, Sector 4, Chandigarh 160001, M: 9780008112 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 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

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arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

10. A request letter be sent to Mr. Chief Justice (Retd.) Ajay Kumar Mittal alongwith a copy of this order.

12.12.2024**(SUVIR SEHGAL)
JUDGE****Brij****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**