

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

244-1.

ARB-490-2023 (O & M)

Date of decision:19.04.2024

M/S JAGDISH RAJ AND BROTHERS

...PETITIONER

VS.

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Chander Mohan Sharma, Senior Panel Counsel,
Union of India, for the respondents.

SUVIR SEHGAL J. (ORAL)

1. By way of present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, (for short “the 1996 Act”) petitioner has approached this Court for appointment of an independent Arbitral Tribunal to adjudicate the dispute, which has arisen between the parties, out of regular contract agreement No.EE/MCD/35 of 1991, Annexure P-1.

2. Counsel for the petitioner submits that the petitioner was awarded a construction contract in the year 1991-92. A dispute arose between the parties and the petitioner filed a suit for recovery before the civil Courts in February, 1993. Counsel submits that the respondents filed an application under Section 34 of the Arbitration Act, 1940, which was accepted by the learned Civil Judge vide order dated 08.08.1997, Annexure P-5, and the suit was stayed to enable the petitioner to apply for arbitration. He submits that the petitioner filed an application under Section 20 of the Arbitration Act, 1940, in November, 1997, which was

dismissed and first appeal filed by the petitioner was disposed of by this Court vide judgment dated 29.01.2018, Annexure P-7, remitting the matter to the learned District Judge, Amritsar, who dismissed the appeal on 13.07.2018, Annexure P-8. He submits that this order was challenged in a revision petition before this Court, which was permitted to be withdrawn by order dated 19.10.2023, Annexure P-9. He submits that thereafter the instant petition has been filed under Section 11(6) of the 1996 Act.

3. Upon notice, respondents have appeared through a counsel, although, no reply has been filed to the petition, but a miscellaneous application has been moved *inter alia* objecting to the appointment of an Arbitrator on the ground that the petition is barred by time.

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

5. The stand taken by the respondents in the miscellaneous application cannot be accepted. During the pendency of the revision petition before this Court, respondents had given an express “no objection” to the appointment of an Arbitrator and also agreed that the parties shall be governed by the 1996 Act. It would be pertinent to refer to the order, Annexure P-9, passed by this Court, which is reproduced hereunder:-

“1. The petitioner herein assails order dated 24.9.1999 (Annexure P-2) passed by learned Civil Judge (Senior Division), Amritsar, vide which a petition under Section 20 of Arbitration Act, 1940 filed by the petitioner seeking referring of the dispute to the Arbitrator, has been dismissed. The petitioner also assails order dated 13.7.2018 passed by learned Additional District Judge, Amritsar whereby appeal against the aforesaid order dated 24.4.1999 has also been dismissed.

2. During the course of arguments, learned counsel representing the respondents submitted that the respondents would not have no objection for appointment of an Arbitrator to adjudicate in the matter and that the parties be governed by the Arbitration and Conciliation Act, 1996.

3. In view of the aforesaid statement, learned counsel representing the petitioner submitted that the aforesaid offer is acceptable to the petitioner and that, as such, keeping in view the statement made by learned counsel for the respondents, he may be permitted to withdraw the instant revision petition with liberty to file a petition under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate on the dispute in hand.

4. In view of the aforesaid submission, the instant petition is dismissed as withdrawn with liberty aforesaid .”
6. In view of the above, the objection raised by the respondents regarding limitation, is rejected. Prayer made in the petition is accepted.
7. Accordingly, petition is allowed. Mr. Justice M.S. Sullar (Retd.), a former judge of this Court, Kothi No. 220, Sector 25, Panchkula, Mobile No.9780008105, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.
8. Parties are directed to appear before the learned Arbitrator on the day, time and place to be fixed by him.
9. Liberty is granted to the parties to raise all the claims, counter claims, defences, pleas etc. before the Arbitrator.
10. A request letter alongwith a copy of this order be communicated to Mr. Justice M.S. Sullar (Retd.).
11. Pending applications are disposed of.

19.04.2024

(SUVIR SEHGAL)
JUDGE

sheetal

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