

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****135****CR-2495-2025(O&M)****Date of decision: 28.04.2025****Fire Luxur Developers Pvt. Ltd.****...Petitioner(s)****Vs.****Capric Contracts Pvt. Ltd. & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shobit Phutela, Advocate
Mr. Yashdeep Shah, Advocate
for the petitioner.

*********NIDHI GUPTA, J.**

Present Revision Petition has been filed by the defendant under Article 226/227 of the Constitution of India for setting aside the order dated 12.03.2025 (Annexure P5) passed by learned Civil Judge, Junior Division, Gurugram in Civil Suit No.CS-418-2025 titled as "Capric Contracts Pvt. Ltd. & Another Vs. Fire Luxur Developers Pvt. Ltd" whereby the application filed by the petitioner under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, has been dismissed.

2. It is repeatedly submitted by learned counsel for the petitioner that the impugned order has been passed by the learned Civil Judge only on the ground that a Settlement Agreement had been arrived at between the parties. It is submitted that however, the impugned order



could not have been passed as in the said Settlement Agreement, various TDS payments made by the petitioner were not taken into account. Learned counsel relies upon judgments of Hon'ble Supreme Court in **"P. Anand Gajapathi Raju & Others Vs. P.V.G. Raju (Died) & Others"** Civil Appeal No.5251 of 1993 decided on 28.03.2000 AIR 2000 SC 1886; **"Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums"** Civil Appeal No.5156 of 2003 decided on 23.07.2003 AIR 2003 SC 2881; **"National Agricultural Co-op. Marketing Federation India Ltd. Vs. Gains Trading Ltd."** Arbitration Petition No.15 of 2006 decided on 22.05.2007 AIR 2007 SC 2327; **"S.B.P. and Co. Vs. Patel Engineering Ltd. and Ors."** AIR 2006 SC 450; **"SBI General Insurance Co. Ltd. Vs. Krish Spinning"** 2024 (6) ALD 69; **"Union of India (UOI) and Others VS. Master Construction Co."** Civil Appeal No.3541 of 2011 decided on 25.04.2011 2011 (102) AIC 142; and judgment of Bombay High Court in **"EBIX Cash Pvt. Ltd Vs. State of Maharashtra & Others"** Writ Petition No.6707 of 2024 decided on 22.07.2024 2024(5) ABR 757, wherein it has been held that a claim for arbitration cannot be rejected merely or solely on the ground that a settlement or discharge voucher has been executed between the parties.

3. No other argument is made on behalf of the petitioner.
4. I have heard learned counsel for the petitioner and perused the case file in great detail.



5. Brief facts of the case are that the petitioner and the respondents were engaged in a contractual relationship by way of Work Contracts under which Work Orders were issued by the petitioner to the respondents for construction works in a project called "The Emyrean". The project was for construction of residential units. In every such Work Order, an Arbitration Agreement was incorporated for resolution of disputes between the parties. Subsequently, as certain payments were outstanding against the petitioner, a Settlement Agreement dated 13.03.2023 was entered into between the parties to settle their respective accounts under the Work Contracts. Apparently, as the petitioner still failed to make the payment, a Civil Suit No.418 of 2025 dated 29.01.2025 (Annexure P1) was filed by the plaintiffs/respondents herein, for specific performance, permanent and mandatory injunction related to Settlement Agreement dated 13.03.2023. The plaintiffs had claimed that they had provided construction services to the petitioner under various Work Orders which were not paid in full. As per the Settlement Agreement dated 13.03.2023, Rs.1,20,47,346/- was due of which Rs.21,40,342/- was to be paid as GST, which was payable to the Government directly against the production of challans or to be reimbursed to the plaintiffs after receiving proof of deposit; and balance amount of Rs.99,07,004/- would be paid to the plaintiffs by the defendant as consideration for the transfer of unit No.417 in Phase-II of "The Emyrean" Project in Karnataka.



6. During the pendency of this suit, an application dated 'Nil' (Annexure P3) was filed by the petitioner under Sections 5 and 8 of the Arbitration and Conciliation Act with the prayer that the matter be referred to the Arbitration in view of the Arbitration Clause contained in the Work Contracts executed between the parties. Vide impugned order dated 12.03.2025 (Annexure P5), the said application of the petitioners has been dismissed.

7. The sole argument raised on behalf of the petitioner is that during the inspection of the purported Settlement Agreement dated 13.3.2023 by Accounts and Audit Team of the petitioner Company, few discrepancies were found. Few payments and TDS entries were not accounted for in the Settlement Agreement. It has been submitted that the same was reported to the respondents via email. However, no response was given by the plaintiff to rectify the purported Settlement in view of the aforesaid discrepancies.

8. However, I find no merit in the above-said submissions made on behalf of the petitioner. First and foremost, none of the aforesaid emails purported to have been sent by the petitioner to the respondent, have been attached with the present petition. In any event, the said argument of the petitioner is liable to be rejected as upon a perusal of the Settlement Agreement dated 13.03.2023 (attached with the plaint [Annexure P1] at page 68-69 of the paper book), it is seen that it has been



clearly stated therein that *“The Parties agree that after duly verifying the accounts they have arrived at full and final amount payable to Capric as Rs.1,20,47,346/-, out of which GST of Rs.21,40,342/- would be payable to the government directly against the production of challans or to be reimbursed to Capric after receiving firm proof of deposit of the same to the government authorities. Balance amount of Rs.99,07,004/- (after deduction of 21,40,342/-) would be payable to Capric as under:...”* (Emphasis is mine).

9. The Id. Counsel for the petitioner is unable to dispute that the said Settlement Agreement was entered into by the petitioner “after duly verifying the accounts”. It is also not denied by learned counsel for the petitioner that after entering into the Settlement Agreement dated 13.03.2023, as per the defendant’s request, an undertaking/No Due Certificate dated 11.04.2023 was also issued by the plaintiffs; thereby underscoring that after Agreement dated 13.03.2023, the plaintiff shall have no claim left on the defendant with respect to the said Work Contracts in question. Needless to say, vice versa would also apply. It is also admitted by learned counsel for the petitioner that it was an error on part of the petitioner in not pointing out the alleged discrepancy in the Settlement.

10. Moreover, it is not denied that the Arbitration Clause was contained in the original Work Contracts executed between the parties. Admittedly, in the present Settlement Agreement dated 13.03.2023, there is no clause for the matter to be referred to Arbitration in case of any



dispute. The petitioner can derive no benefit from the relied upon judgments as the same are distinguishable on facts and law. Thus, it has been correctly reasoned by the learned trial Court in the impugned order that: -

“9....the Full and Final Settlement Agreement dated 13.03.2023 constituted a novation of the earlier contractual obligations, thereby superseding the arbitration clause contained in the work orders. The present suit is purely for specific performance of the Settlement Agreement, which is a distinct and independent cause of action, thereby excluding the applicability of arbitration as a mode of dispute resolution....”

11. Accordingly, I find no ground is made out to interfere in the impugned order. The present petition is hereby **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

28.04.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No