

219

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

**ARB No.253 of 2018 (O&M)
Date of Decision: 21.10.2022**

M/S YASH CONSTRUCTIONS

.....Petitioner

Vs

M/S BPTP LTD

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.S. Bakshi, Advocate with
Mr. Anshul Sharma, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to settle the dispute between the parties.

[2]. The work order was allotted to the petitioner on 22.06.2011 by the respondent for construction of civil work for Tower "L" at Group Housing Project (GH-2) of the respondent in Sector 82, Faridabad. An agreement was also executed on 22.06.2011. As per clause 'U' of the agreement, provision has

been made that in case of dispute, the sole Arbitrator is to be appointed by the Managing Director of respondent on the written request from either party. The work order was in respect of Rs.6.2 crores for which the aforesaid agreement was executed. As per terms of the agreement, the building was constructed by the petitioner under the supervision of the respondent and on completion, the possession of the building was handed over to the respondent within the time prescribed. Respondent had also issued a provisional completion certificate on 07.08.2012 as per clause "P" of the agreement. Due to escalation in the price of the material, the project cost was increased and due to mismanagement by the respondent, the petitioner had to incur huge losses.

[3]. On 02.08.2013, the respondent asked the petitioner to produce the original bills for making balance payment. Petitioner responded to the call and submitted all the original bills but later on the respondent held those bills and projected a case that original bills have been lost. Even the security to the tune of Rs.6,50,000/- was forfeited. Respondent started coercive action against the petitioner for which a criminal complaint was filed by one of the partners on 16.11.2013. Petitioner also filed one more complaint on 23.01.2014 before the Police. Even at the instance of the Police, an effort was made to resolve the dispute

amicably between the parties on 15.05.2014 and the respondent took signatures of the husband of the petitioner namely Ugarsain Kaushik and gave three post dated cheques of Rs.34,76,774/-.

[4]. The controversy was again debated between the parties. On 21.08.2014, an amount of Rs.19 lakhs (against cheque No.216842) was paid by the respondent to the petitioner and respondent also took signatures of Ugarsain Kaushik on some blank papers. Petitioner ultimately filed criminal complaint under Section 156(3) Cr.P.C., before the Illaqa Magistrate owing to inaction on behalf of the police to take action against the respondent. FIR No.641 for the offences under Sections 420, 384, 406, 467, 468, 471, 506, 120-B IPC was registered at PS Sector 7, Faridabad which was ultimately quashed by the High Court vide order dated 20.05.2016 passed in CRM-M No.44268 of 2014.

[5]. Petitioner remained unsuccessful in SLA (Cri.) CRLMP No.17536 of 2016 which was dismissed by the Hon'ble Apex Court, however with liberty to the petitioner to take recourse to the civil remedies in accordance with law. That is how the present petition came to be filed.

[6]. Notice of motion was issued on 24.08.2018. As per

office report dated 26.09.2022, respondent was duly served. However none has appeared on behalf of the respondent till date. The present case was filed in the year 2018. In view of directions issued by the Hon'ble Apex Court in SLP (Civil) No.5306 of 2022 the present category of cases which is pending for more than one year from the date of filing has to be decided within a period of six months from 19.05.2022.

[7]. Learned counsel for the petitioner submits that the petitioner is a registered partnership firm having registered in the year 2008-2009 with the District Registrar of Firms, Faridabad on 29.09.2008. Virtually the stand of the petitioner has gone unrebutted in view of non-appearance of the respondent even after due service. Petitioner has tentatively valued its claim to the tune of Rs.90 lakhs, subject to final adjudication by the Arbitrator.

[8]. Keeping in view the facts and circumstances of the case, I hereby appoint Sh. K.C. Sharma, Distt. & Sessions Judge (Retd.), R/o BB-2, Villa-3, Ground Floor, VIP Floors, Sector 81, Faridabad, Mobile No.8930337700 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his

independence and impartiality to settle the dispute between the parties.

[9]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[10]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[11]. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. K.C. Sharma, Distt. & Sessions Judge (Retd.),
R/o BB-2, Villa-3, Ground Floor, VIP Floors, Sector 81,
Faridabad, Mobile No.8930337700

[12]. Petition stands disposed of accordingly.

October 21, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No