IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(106)

ARB-492-2021
Date of decision:- 18.09.2024

M/s J.D. Builders through its partner, Sh. Parvesh Kumar Gupta

... Petitioner

Versus

Union of India through Engineer in Chief and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. M.L.Saggar, Senior Advocate with
Mr. Chetal Goel, Advocate and
Mr. Yugank Goyal, Advocate
for the petitioner.

Ms. Puneeta Sethi, Advocate
Senior Panel Counsel and
Mr. Yashoodev Singh Thakur, Advocate
for the respondents-UOI.

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SUVIR SEHGAL, J. (*ORAL*)

1. By way of instant petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an Arbitrator.

2. Learned senior counsel for the petitioner submits that the petitioner was allotted work of construction of sheds and Traffic Railway Platform, etc. at AD Dappar vide allotment letter dated 14.07.2004, Annexure P-1. He submits that Clause 70 of IAFW-2249, which provides

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for the General Conditions of the Contract, contains an Arbitration Clause. Learned senior counsel asserts that the work was completed on 15.05.2010 and the final bill was submitted under protest on 01.03.2012, however, part payment was received on 23.07.2018. He submits that the petitioner invoked the Arbitration Clause by serving a notice dated 20.02.2020, Annexure P-3, which was followed by a reminder and on 09.07.2021, Annexure P-5, respondents called upon the petitioner to sign an agreement for appointment of an Arbitrator. Learned senior counsel submits that the agreement was duly signed and conveyed to the respondents by covering letter dated 27.07.2021, whereby petitioner waived the right to object to the appointment of a serving officer as an Arbitrator. It is his argument that in view of the amended provision of Section 12 (5) of the Act, read with the Seventh Schedule, a serving officer of the respondents is ineligible to be appointed as an Arbitrator. Reference has also been made by learned senior counsel to Annexure P-6 to submit that the recommendation has been made by the respondents for appointment of an Arbitrator and they cannot oppose the prayer made in this petition.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that the petitioner was granted as many as nine extensions for completion of the work. A categoric stand has been taken that the final payment was delayed as the petitioner failed to rectify the defects pointed to it. By making a reference to Annexure R-1, counsel for the respondents submits that the entire payment, including escalation amount, was made to the petitioner,

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who did not lodge any protest. She submits that all the claims, being raised by the petitioner, are baseless and have been considered and rejected vide letter dated 06.04.2015, Annexure R-4.

4. Learned senior counsel for the petitioner has invited the attention of the Court to the notice invoking the Arbitration Clause to submit that the petitioner has specifically mentioned that he was forced to sign the final bill under protest, failing which, the bills would not have been cleared.

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

6. As to whether the petitioner accepted the payment voluntarily or under duress is a matter, which is required to be considered by the learned Arbitrator. Supreme Court in ***SBI General Insurance Co. Ltd. Versus Krish Spinning***, ***2024 (3) R.C.R. (Civil) 497*** has held that once the full and final settlement becomes a matter of dispute and disagreement between the parties, such a dispute can be referred to arbitration in accordance with the arbitration clause contained in the original contract. Whether the delay was on account of failure of the petitioner to rectify the defects or for any other reason, is again an issue, which the Arbitrator is required to go into. It is evident from Annexure R-6 that the respondents have accepted that a dispute exists, for which an Arbitrator deserves to be appointed. Accordingly, the prayer made in the petition deserves to be acceded to.

7. Petition is allowed.

8. Er. Krishanjit Singh, former Chief Engineer, resident of H.No. 140, Sector 40- A, Chandigarh, Mobile No. 9814216762, is nominated as an

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Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute.

9. Parties are directed to appear before the Arbitrator on 23.10.2024, at 11:00 A.M., at the address mentioned above or at any other place, time or date to be fixed by the Arbitrator.

10. Fee shall be paid in accordance with the Fourth Schedule of the Act, as amended.

11 Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.

12. Liberty is granted to them to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.

13. Needless to mention that all the questions arising between them 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. Copy of the order be sent to the appointed Arbitrator.

(SUVIR SEHGAL)
JUDGE

18.09.2024
Kamal

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

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