

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 172 of 2014 (O&M)
Date of Decision: 31.07.2015

M/s Orlando Software Park P.Ltd.

..Petitioner

versus

Surender and others

..Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE.

Present : Mr. Amit Jain, Advocate, for the petitioner.
Mr. Sameer Rathore, Advocate and
Mr. Sumit Goel, Advocate, for the respondents.

S.J.VAZIFDAR, A.C.J. (Oral)

This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of sole Arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties had entered into a development agreement dated 16.08.2004 which is admitted. Clause 35 of the agreement reads as under:-

“In case of any dispute or difference, the parties shall try to settle the same amicably, failing which the matter shall be referred to Arbitration under the Indian Arbitration and Conciliation Act, 1996 and both the parties shall appoint one Arbitrator on their behalf and if required a third Arbitrator to act as umpire.”

3. The only contention raised was that the claim is stale and barred by limitation. I do not wish to express any final opinion in this regard. Suffice it to state in this regard that this is not an open and shut case of limitation. The agreement undoubtedly is dated 16.08.2004. There is no time fixed under the contract to perform the same. The three years period of limitation commences therefore from the date of knowledge of the refusal to perform the contract.

4. Petitioner had issued several notices calling upon the respondents to perform their obligations under the contract. The first such notice is dated 22.10.2010. This letter merely calls upon the respondents to perform their obligations under the contract. It is stated on behalf of the petitioners that they have made payments aggregating to Rs.16 lacs to the respondents. However, the payments are denied before me by the respondents. It is apparent to note that there was no reply from the respondents. There is nothing on the record which indicates refusal to perform the contract. The first refusal in writing to perform the contract was by a letter dated 24.01.2012 wherein they stated that the agreement stood cancelled w.e.f. the last week of June, 2015. The issue of limitation will have to be decided by the Arbitrator. The petitioner invoked the arbitration by a letter dated 31.05.2012.

5. The petition is disposed of and Justice S.K.Jain, former Judge of this Court, # 1278, Sector 18, Chandigarh, is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties.

A copy of this order be sent to the Arbitrator.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

31.07.2015

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