

**ARB-368-2023****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****257****ARB-368-2023****Date of decision:09.05.2024****M/S V.S. SAINI CONTRACTOR****...PETITIONER****VS.****THE SUPERINTENDING ENGINEER AND ANR.****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

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

Mr. Brijesh, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

1. Instant petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short "the Act"), for appointment of an independent Arbitral Tribunal to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that the petitioner was allotted work of widening and renovation of road from Rajiv Chowk to CP-9, providing protection and drainage arrangements etc. for an estimated costs of Rs.56 lakhs by work order cum contract agreement dated 21.09.2021. He submits that Clause 29 of DNIT, Annexure P-2, contains an arbitration clause. He submits that as a dispute arose between the parties, petitioner served a legal notice dated 27.04.2022, Annexure P-4, invoking the arbitration clause, but no response was received. He submits that as per the arbitration clause, the Superintending Engineer of



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the work concerned is to be appointed as the Arbitrator, but he is ineligible to be appointed in terms of the judgment of the Supreme Court in *Perkins Eastman Architects DPC & Another Versus HSCC (India) Ltd. 2020 (20) SCC 760.*

3. Upon notice, respondents have filed a reply, contesting the petition, by taking a stand that the work order was cancelled vide letter dated 29.12.2021, Annexure R-1, and petitioner is not entitled to claim any damages. It has been further submitted that the amount due to the petitioner has been paid to it, but security amount has not been refunded.

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

5. Although, the contract stands rescinded, but the arbitration clause, which forms a part of the work order does not perish and can be independently enforced as has been held by the Supreme Court in *The Branch Manager, M/s Magma Leasing & Finance Limited and another Versus Potluri Madhavalata and another 2009 (4) R.C.R. (Civil) 900.* As to whether the petitioner is entitled to the amount claimed, would be adjudicated by the Arbitrator. Consequently, the prayer made in the petition deserves to be accepted.

6. Petition is allowed. Mr. Sanjeev Kaushik, Kothi No.1033, Sector 12-A, Panchkula, Mobile No.9417233385 is appointed as the sole 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 between the parties.

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7. Parties are directed to appear before the learned Arbitrator on 31.05.2024 or on any day, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

8. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

9. The arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.

10. Needless to mention that all the questions arising between the parties 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.

11. Copy of the order be sent to the learned arbitrator.

09.05.2024*sheetal***(SUVIR SEHGAL)
JUDGE**

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