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

**ARB No.112 of 2022(O&M)
Date of Decision: 21.11.2022**

RAMESH KUMAR CONTRACTOR

.....Petitioner

Vs

**PUNJAB WATER SUPPLY AND SANITATION DEPARTMENT
AND OTHERS**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Jagdeep Singh, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11(6)of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator for adjudication of his claim arising out of work assignment providing Small Bore Sewerage System and Construction of Sewerage Treatment Plant at Village Alkara, Qila Hakima Rajia, Kuddi Khurd, Block Sehna, Sherpur, Barnala District, Sangrur (4 N of Village).

[2]. The aforesaid work assignment was allotted to the

petitioner by the respondent No.3 on 04.08.2006. As per terms and conditions of the letter of allotment/agreement, the work was to be completed within a period of six months from the date of allotment. The work was to commence with effect from 04.08.2006 and the deemed date for completion of work was 03.02.2007. On completion of work, a period of three years was kept as operation and maintenance period. The petitioner was allotted the work in view of terms and conditions of the agreement. The petitioner started the work in accordance with the conditions of the agreement.

[3]. As per case set up by the petitioner, the respondents delayed the possession of the site and also delayed the supply of drawings for the construction. Petitioner has alleged that the delay in execution of work was solely attributable to the respondents.

[4]. In the year 2007, CWP No.10197 of 2007 was filed by one of the contractors in the High Court. The said writ petition remained pending till the year 2009 and the same was disposed of vide order dated 14.12.2009 with a direction to the respondents to complete the work within a period of one year from the date of passing of the order.

[5]. After disposal of the said writ petition, it was decided by the respondents to get the pending works completed within a

time bound manner. During pendency of the work, costs of the material got enhanced enormously. The price escalation was brought to the notice of Superintending Engineer and the petitioner was ensured by the Superintending Engineer that the issue as regards the escalation of costs would be considered later on. The petitioner started the work, but the respondents imposed penalty upon the petitioner due to delay in the execution of the work. First penalty was waived off by the Superintending Engineer vide order dated 26.06.2015.

[6]. On completion of the work in all respects, the petitioner raised his final bill and the same was partially paid. The effort made by the petitioner to get the issue settled by means of amicable settlement could not be fructified and the respondents did not pay the dues to the petitioner.

[7]. The petitioner sent a notice under Clause 25 of the Agreement to the Executive Engineer on 26.11.2019. Under Clause 25 of the Agreement, Superintending Engineer was designated as the sole Arbitrator.

[8]. In view of amendment in the Arbitration and Conciliation Act, 1996 in the year 2015, the said officer became ineligible to act as an Arbitrator. The petitioner proposed two names of Arbitrators, but the respondents did not respond to the said proposal.

[9]. Owing to the inaction on behalf of the respondents, the petitioner ultimately ventured to file CWP No.7394 of 2021 for release of the amount. The said writ petition was disposed of vide order dated 01.04.2021, thereby directing the respondent No.2 therein to decide the legal notice dated 24.02.2021. Thereafter, the order dated 04.10.2021 came to be passed by the Executive Engineer.

[10]. Perusal of the aforesaid order would indicate that second penalty of Rs.8,62,875/-, which was waived off by the Superintending Engineer, Sangrur vide order dated 01.12.2020 was the bone of contention between the parties and the said order waiving off said penalty was set aside vide order dated 04.10.2021 by the Executive Engineer, Water Supply and Sanitation, Division Barnala. While passing the order, the authority has pointed out that the claim of the petitioner as regards the waiving off penalty vide order dated 01.12.2020 is unsustainable. However, the petitioner was held entitled for the release of the remaining amount of Rs.76,558/- pertaining to third and final bill of different schemes as detailed in tabulated information.

[11]. During course of arguments, learned counsel for the petitioner does not wish to assail the order dated 29.06.2012, vide which the contract was rescinded. The claim of the

petitioner was in respect of first and second penalty. The first penalty was waived off. The second penalty was also waived off vide order dated 01.12.2020, but the said order has been set aside by the Executive Engineer vide order dated 04.10.2021.

[12]. Learned counsel for the petitioner confines his arguments only to the extent of second penalty in a sum of Rs.8,62,875/- along with interest and an amount of Rs.76,558/- that has been quantified by the Executive Engineer while passing the order dated 04.10.2021.

[13]. In all, the petitioner has fixed tentative value of his claim to the tune of Rs.10-12 lacs subject to final adjudication by the Arbitrator. The plea as regards the claim of the petitioner having *ex facie* time barred, shall be looked into by the Arbitrator in accordance with law.

[14]. The Hon'ble Apex Court in **BSNL Vs Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738** has held that the Court must undertake a primary first review to weed out manifestly *ex facie* non-existence and invalid arbitration agreement or non-arbitrable disputes. The *prima facie* review at such a stage is to cut the deadwood, where dismissal is bare faced and pellucid, and when on the facts and law, the litigation must stop at the first stage. It is a settled principle of law that in case of even slightest doubt, the matter has to be referred to the Arbitrator,

leaving all the pleas to be adjudicated by the Arbitrator in accordance with law.

[15]. In view of above, I deem it appropriate to appoint Ms. Prerna Malhotra, Advocate, House No.755, Sector-4, Panchkula, Mobile No.9888555510 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.

[16]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the 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.

[17]. The venue of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

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

Ms. Prerna Malhotra, Advocate
House No.755, Sector-4, Panchkula,
Mobile No.9888555510

[19]. Petition stands disposed of accordingly.

21.11.2022

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No