

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

117

ARB-444-2023

Date of decision:21.03.2024

M/S VIJAY KUMAR GARG CONTRACTOR ... PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gaurav Rana, Advocate &
Mr. P.S. Rana, Advocate for the petitioner.

Ms. Amrita Garg, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, petitioner has approached this Court for appointment of sole Arbitrator to adjudicate the disputes and differences between the parties.

2. Counsel for the petitioner submits that the petitioner was allotted work of "Relining of Sirhind Feeder from RD 244500-246000" by allotment letter dated 01.11.2021, Annexure A-2. He submits that an agreement was signed between the parties, which contains arbitration clause No.25, Annexure A-1. According to the counsel, work was completed and a completion certificate dated 04.05.2022, Annexure A-3, was issued. However, the respondents did not release the entire payment as per the final bill. Counsel submits that as provided in the arbitration

clause, Annexure A-1, petitioner approached the Engineer of the work vide letter, Annexure A-4, and when no communication was received, he filed an appeal, Annexure A-5, with the Superintending Engineer, who also did not decide the appeal. Counsel submits that arbitration clause was invoked by serving notice dated 31.08.2023, Annexure A-6, which remained unattended.

3. Upon notice, reply has been filed by the respondents, opposing the prayer made in the petition. The sole objection taken by the respondents is that the petitioner has not adhered to the time frame as provided in the arbitration clause, Annexure A-1.

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

5. In *Shanti Prasad Goenka Versus Mahanagar Telephone Nigam Limited*, 2016 SCC OnLine Delhi 5256, it has been held that any clause in the agreement which restricts the period of limitation for invoking the arbitration clause is hit by amended provision of Section 28 of the Contract Act. A co-ordinate Bench of this court in *Extra Marks Education India Pvt. Ltd. Versus M/s DIS Chain of Institutions and another*, 2022 (4) R.C.R. (Civil) 991 has held that the period of limitation for referring a dispute to an Arbitrator is three years under the residual Article 137 of the Limitation Act, 1963, from the time when the right to apply accrues. It has been observed that the issue of limitation which concerns the admissibility of the claim must be decided by the Arbitrator/Arbitral Tribunal either as a preliminary issue or at the final stage after the parties have led evidence.

6. For the afore-going reasons, the prayer made in the petition, deserves to be accepted.

7. Petition is allowed. Mr. Balraj Singh, Advocate, r/o House No.296, Sector 25, Panchkula, Mobile No.9417419358, is appointed as an 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.

8. Parties are directed to appear before the learned Arbitrator on 27.04.2024 or on any day, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

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

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

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

21.03.2024

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(SUVIR SEHGAL)
JUDGE

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