

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

Arbitration Case No. 211 of 2019 (O&M)

DECIDED ON:9th January, 2023

**Bhagwan Dass and sons through
its proprietor/partner Shri Sudesh Kumar**

.....PETITIONER

VERSUS

Union of India and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. S.K.S. Bedi, Advocate for petitioner.

Mr. B.S. Kanwar, Advocate for respondents.

AVNEESH JHINGAN, J (ORAL)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of Sole Arbitrator for adjudication of disputes between the parties.

2. The brief facts are that the parties entered into a contract for Repairs to other than Married Accommodation No.HT-72 and HT-73 of 144 AD REGT Ambala Cantt under GE (South) Ambala (Respondent No.4).

Clause-70 of General Conditions of Contract reads as under:

"70 Arbitration-All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. Or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the Sole arbitration of an (Serving Officer having degree in Engineering or equivalent or having passed final/direct final examination of Sub Division II of Institution of Surveyor (India) recognised by the Govt. of India) to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such references shall not take place until after the completion or alleged completion of the works or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53, 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement of continuance of any arbitration proceedings hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, ex parte, if either party, in spite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, alongwith sums awarded, separately on each individual item of dispute.

(The arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims).

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the Contract."

3. The claim made by the petitioner vide letter dated 5th June, 2013 was finalised by respondent No.4 but petitioner being dissatisfied received payment under protest on 15th February, 2019. On receipt of payment notice dated 22nd March, 2019 for appointment of arbitrator was issued. No action was taken by respondent, hence, this petition.

4. During pendency of petition, the parties were referred for mediation which failed.

5. Learned counsel for respondents submits that the claim is time barred.

6. From perusal of the pleading, it is forth coming that the payment to the petitioner was made in 2019 and the same was received by petitioner under protest. Thereafter notice was issued and the present petition was filed in 2019. *Prima-facie*, the claim does not appear to be time barred, be that as it may, the issue can be raised before the Arbitrator.

7. The present petition is disposed of by appointing Ms. Monika Jangra, Advocate, # 1984, Sector-15 Panchkula, as an Arbitrator, subject to the declaration to be made by her under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

8. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. Fee of the Arbitrator will be equally borne by both the parties. The Arbitrator is requested to complete proceedings as per time limit specified under Section 29-A of the Act.

9. It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit. Copy of the order be sent to the appointed Arbitrator.

10. Since the main case has been disposed of, the pending application, if any is rendered infructuous.

9th January, 2023

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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>