

Neutral Citation No. **2024:PHHC:028973**

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

264

ARB-290-2023 (O&M)
Date of Decision:12.03.2024

NKC Constructions Pvt. Ltd.

... Petitioner

Vs

Punjab Small Industries & Export
Corporation Ltd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Ms. Madhu Dayal, Advocate for the respondents.

SUVIR SEHGAL, J. (ORAL)

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

2. Counsel for the petitioner submits that the petitioner was allotted work of 'construction of cement concrete road in Phase VIII, Industrial Focal Point, Ludhiana' vide letter of acceptance dated 28.01.2020, Annexure A-2. He submits that in terms of letter Annexure A-2, petitioner deposited the performance security and the

contract was entered into between the parties. He submits that clause 25 of the general conditions of contract contains an arbitration clause. He submits that the work was completed on 15.09.2021 and the petitioner requested the respondents to release the retention money and also raised some claims, which was rejected by the respondents vide letter dated 21.09.2022, Annexure A-14. He submits that as dispute arose between the parties, by letter dated 07.10.2022, Annexure A-16, petitioner invoked the arbitration clause while simultaneously requesting the respondents to release the performance security. He submits that as the respondents assured that the performance security will be released and on their asking, by letter dated 08.11.2022, Annexure A-18 petitioner withdrew letter Annexure A-16. Counsel submits that thereafter, the entire amount of performance security was released but as the other claims remained pending, petitioner revived the letter, Annexure A-16 by serving notice dated 19.03.2023, Annexure A-19, which was rejected and rather a show cause notice, Annexure A-21 was issued to the petitioner for blacklisting.

3. Upon notice, response has been filed by the respondents contesting the claim wherein it has been submitted that after withdrawing the invocation letter, petitioner could not revive it.

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

5. Narration of the facts given by the parties show that neither the contract nor the arbitration clause has been denied. The objection

raised by the respondents is that the claims have been settled and after having withdrawn the invocation letter, the petitioner cannot re-agitate the claim. As to whether the claim stands satisfied and as to whether the withdrawal was voluntary, are matters which lie within the domain of the Arbitrator. They do not require any examination from this Court at this stage. Reliance in this regard is placed upon the judgment of the Supreme Court in *Union of India Vs. Parmar Construction Company*, 2019 (5) R.C.R. (Civil) 302.

6. In view of the above, this Court is of the view that the prayer made in the petition deserves to be acceded to.

7. Petition is allowed.

8. Mr. Justice Tejinder Singh Dhindsa, (Retd.), Former Judge of Punjab and Haryana High Court, House No. 123, Sector 8, Chandigarh, Mobile Nos. 7837049208, 9815308888, is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.

10. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator.

11. A request letter along with a copy of this order be sent to Mr. Justice Tejinder Singh Dhindsa (Retd.)

12.03.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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