

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB- Nos.178,179,181,183,185,186,187,188,191,192,196,197,198,202,203
& 204-2021 (O&M)

Date of decision: 13.07.2021

M/s ABW Suncity

....Petitioner

versus

Indu Verma and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Aman Chaudhary, Advocate for the petitioner(s).

Mr. Sumesh Malhotra, Advocate for the respondents
in ARB Nos.183, 186, 188 & 203 of 2021.

Mr. Kuldeep Kohli, Advocate for the respondents in
ARB Nos.178, 179, 181, 185, 187, 191, 192, 196, 197, 198 &
204 of 2021.

Mr. Anshuman Sharma-respondent No.1 in person
in ARB-202-2021.

*(the aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual court on account of restrictions due
to COVID 19)*

GIRISH AGNIHOTRI, J. (Oral)

This order shall dispose of 16 arbitration cases. For the sake of
convenience, facts have been taken from **ARB-178-2021** titled as **M/s ABW
Suncity vs. Indu Verma and others.**

(2) Petitioner-M/s ABW Suncity through its duly authorised
person, has filed the present petition *inter alia* seeking prayer for
appointment of sole arbitrator under Agreement dated 20.02.2012.

(3) At the outset, learned counsel for the petitioner relies on the

judgment/order dated 12.05.2021, passed in RA-CR-25-2021 in ARB-52-2021 and connected cases and separately passed orders on even date in ARB-15-2021 and connected cases. He submits that by these orders, 45 cases were disposed of.

(4) Learned counsel for the petitioner submits that both, on facts and law, the present cases are also same/similar. He submits that in the judgment dated 12.05.2021, this Court had relied upon the observations of Hon'ble the Supreme Court of India in *Pravin Electricals Pvt. Ltd. vs. Galaxy Infra and Engineering Pvt. Ltd. (2021) SCC Online SC 190*. He further briefly submits that if reference is made to paragraph nos. 26 & 27 of the judgment dated 12.05.2021, this Court has also taken the view as per the observations of the Hon'ble Supreme Court of India *inter alia* to the effect that as to whether an arbitration agreement exists between the parties, be left to an Arbitrator who is to examine the documentary evidence produced before him in detail, after witnesses are examined on the same.

He further submits that as has been noticed by this Court in the order dated 12.05.2021, the present case has long drawn history/facts. It has been noticed in paragraph 13 onwards in the judgment dated 12.05.2021 that in the year 2003, the Haryana Value Added Tax was enacted to provide for levy and collection of taxes on the sale or purchase of goods in the State of Haryana and matters incidental thereto and connected therewith. However, till the judgment by the Hon'ble Supreme Court in the case of *Larsen and Turbo vs. State of Karnataka & Anr., (2014) 1 SCC 708*, the Haryana Government did not insist on payment of any tax. However, after the judgment, the Haryana Government re-agitated the demand of VAT payable

and in order to bring clarity/mechanism had formulated the amnesty scheme named as the 'Haryana Alternative Tax Compliance Scheme for Contractors, 2016' notified on 12.09.2016 for the recovery of tax interest or penalty. It is specifically mentioned in para 11 of the petition that the petitioner keeping in view the interest of the apartment owners availed the said scheme by filing its application TC-I on 06.12.2016. Accordingly, Deputy Excise and Taxation Commissioner (ST), Gurugram (East) vide order dated 20.01.2017 as supplemented on 27.01.2017 accepted the said declaration. Vide demand letter dated 27.06.2017, the petitioner further apprised the respondent(s) about the applicability of VAT and requested them to make payment of total amount of Rs.1,80,687/- (approx.) within 30 days failing which interest shall be leviable.

(5) Importantly, to sum up, the dispute had arisen because the petitioner claims that the aforementioned amount was payable by the allottees/residents.

(6) Thereafter, in the judgment/order dated 12.05.2021, further details have also noticed but for the sake of brevity, it is deemed appropriate not to repeat all the facts noticed in the judgment because in the present case, the judgment is part of the case which is annexed as Annexure A1.

(7) Reply(s) on behalf of the respondents in ARB Nos.178, 179, 181, 185, 191, 196, 202 & 204 of 2021, have been filed and the same are taken on record.

(8) On a query put by the Court as to if there is any distinction on the facts of the present case as against facts and Arbitration Case No.52 of

2021 decided on 12.05.2021, learned counsel Mr. Kohli submits that in fact, the petitioner has been guilty of concealing material facts from the Court. Some of the submissions as were made by learned counsel in RA-CR-25-2021 in ARB-52-2021, were also repeated. However, he submits that the petitioner has filed a case for recovery of H Vat (Haryana Value Added Tax) against the buyers who bought an under construction flat being respondents No.3 & 4 and the subsequent buyers, who opt a constructed property, on which H Vat is not applicable, being respondents No.1 & 2.

(9) Learned counsel Mr. Anshuman Sharma, submits that in fact, the issue of seat of arbitration has not been decided in the judgment dated 12.05.2021. On a question put by the Court, as to if any of the parties as similarly situated as respondents had moved an application before the Arbitrator fixing the place of arbitration, learned counsel submits that no such application has been filed. He submits that as per Section 20 of the Arbitration and Conciliation Act 1996, the place of arbitration was required to be adjudicated upon. He further submits that the issue of limitation was also not decided in the judgment dated 12.05.2021.

(10) Learned counsel Mr. Sumesh Malhotra, while making reference to ARB-188-2021, inter alia submits that the petitioner has filed the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, on purported grounds that as per agreement dated 15.07.2011, the sole arbitrator be appointed whereas in fact the same was not executed by respondents No.1 & 2.

(11) Having heard counsel for the parties, this Court is of the

considered view that the facts and the law point involved in the present case is covered by the judgment/order dated 12.05.2021, passed in RA-CR-25-2021 in ARB-52-2021.

(12) This Court agrees with the plea taken by learned counsel for the petitioner that vide order dated 12.05.2021, this Court had relied upon the observations of the Hon'ble Supreme Court in *Pravin Electricals case (supra)*, as reproduced in paragraph 26 of the judgment. He further submits that paragraph Nos.26 & 27 of the judgment makes it clear that all the issues were kept open to be decided by the Arbitrator. It was also made clear that Arbitrator may proceed to decide the issue *de hors* the *prima facie* observations made in the judgment dated 12.05.2021. He further submits that it was also made clear that Arbitrator may take up each case as independent case and hear/deal with the dispute raised by each of the parties independently.

(13) This Court thus agrees with the submission made by learned counsel for the petitioner that all the issues which the respondents have raised before this Court, can well be taken and dealt with by the Arbitrator. It is further evident from Chapter V of the Arbitration and Conciliation Act 1996 which deals with '**Conduct of Arbitral Proceedings**' that the Arbitrator/the Tribunal under Section 20 of the Act, can decide about the place of arbitration. In the present case till date, the respondents have not moved an application before the Arbitrator for deciding the place of arbitration. This Court has no hesitation that in case, the application is made by the respondent(s) for deciding the place of arbitration, the same

shall be decided by the Arbitrator in accordance with law.

(14) At this stage, this Court also agrees with the submission made by learned counsel for the petitioner that all issues including the issues now sought to be raised i.e. of limitation, shall also be gone into by the Arbitrator and in accordance with law, in continuation of the order dated 12.05.2021, passed by this Court.

(15) For the reasons recorded above, the present arbitration cases stand **disposed of** in the same terms as in RA-CR-25-2021 in ARB-52-2021. Subsequent applications pending along with the present cases, also stand disposed of .

(GIRISH AGNIHOTRI)
JUDGE

13.07.2021

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No