

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 101

ARB-17-2020 (O&M)

Date of decision : 20.03.2020

M/s Rakesh Brothers

..... Applicant

VERSUS

Haryana Housing Board

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Anshul Mittal, Advocate, with
Mr.Arav Gupta, Advocate,
Mr.Sachit Arora, Advocate and
Ms.Aanchal Mittal, Advocate, for the applicant.

Mr.Lokesh Sinhal, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

Short reply on behalf of the respondent filed in Court today is ordered to be taken on record. A copy thereof has been supplied to the counsel opposite.

The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, the Act) for appointment of an Arbitrator.

It is the admitted position that the parties entered into an agreement through which the respondent allotted to the applicant the work for the construction of 32 Type-C Flats in Housing Board Colony, Jind Road, Rohtak. It is further not disputed that such agreement contained clause 33 as per which disputes between the parties were to be settled through the mode of arbitration.

Disputes arose between the parties and therefore the applicant through letter dated 14.03.2019 wrote to the respondent seeking resolution of such disputes but when they remained unresolved, through notice dated 27.05.2019, the applicant wrote to the respondent seeking resolution of the disputes through arbitration. It also proposed names of three Arbitrators and sought the respondent's consent qua any of them. In response to the aforesaid notice dated 27.05.2019 the respondent

wrote to the applicant requiring the applicant to make a pre deposit in terms of clause 33(7) of the agreement but neither any Arbitrator was appointed nor any consent was given to any of the Arbitrators proposed by the applicant occasioning the filing of an application under Section 11 of the Act being Arbitration Case No.290 of 2019 “*M/s Rakesh Brothers vs Haryana Housing Board*” which was withdrawn on 10.01.2020 with liberty to the applicant to file a fresh one on the same cause. It is in this background that the present application has been filed on 16.01.2020 for the aforesaid relief.

In response to the application the respondent has filed a short reply through which the Court is informed that on 12.03.2020 the respondent has appointed an Arbitrator and therefore it is prayed that the respondent's application should be disposed of as having been rendered infructuous. It is further submitted by the respondent that in terms of clause 33(7) of the agreement between the parties the applicant is required to make a pre deposit before the Arbitrator and that the respondent has requested the Arbitrator appointed by it to ensure that such deposit is made by the applicant.

The prayer of the respondent to dispose of the present application as infructuous on the ground that on 12.03.2020 an Arbitrator has been appointed by it is liable to be rejected in view of the law laid down by the Supreme Court in “*Datar Switchgears Ltd. vs Tata Finance Ltd. and others*” (2000) 8 SCC 151 and “*Deep Trading Company vs Indian Oil Corporation and others*” (2013) 4 SCC 35 wherein it has been categorically opined that after the filing of the present application the respondent forfeits its right to appoint an Arbitrator.

So far as the issue with regard to pre deposit by the applicant is concerned, the same would lie within the jurisdiction of the Arbitrator.

After hearing learned counsel for the parties, Justice H.S.Bedi, a former Judge of the Supreme Court of India, is appointed as the sole Arbitrator.

However, such appointment would be subject to the declaration to be made by Justice H.S.Bedi under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.

As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients, the venue of the arbitration shall be at Chandigarh.

A copy of the this order be forwarded to Justice H.S.Bedi (Retd.) at the given address:-

Village Rani Majra,
P.O. Mullanpur Garibdas,
Tehsil Kharar, District Mohali, Punjab.
(Mob. No.97804-14511).

After seeking the convenience of the Arbitrator, the parties are directed to appear before him on 30.03.2020 or on any other date suitable to all concerned.

The matter is disposed of in the above terms.

20.03.2020
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No