

ARB-260-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(109)

ARB-260-2023 (O&M)
Date of decision:- 09.01.2024

M/s Subhash Mahajan, Govt. Contractor

... Petitioner

Versus

The Chief Engineer (Head Quarters) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. S.K.Sharma, Advocate
Senior Panel Counsel
for the respondents.

SUVIR SEHGAL, J. (ORAL)

CM-21043-CII-2023

1. Exemption, as prayed for, is granted.
2. Application is allowed.

CM-21048-CII-2023

1. Application is allowed as prayed for.
2. Reply filed on behalf of the respondents is taken on record.

Main case

1. By way of instant 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 an Arbitrator.

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2. Counsel for the petitioner submits that the petitioner was awarded a contract by the respondents, which was governed by the conditions laid down under IAFW-2249 and Clause 70 of the general conditions of contract contains an Arbitration Clause. Counsel submits that after the completion of the work, the petitioner raised a final bill on 30.03.2021, but the payment was released to him in July, 2021, after he had given a No Due Certificate. He submits that as the entire payment was not made, petitioner raised a claim and invoked the arbitration clause by serving a legal notice dated 12.04.2022, Annexure P-13.

3. On the basis of the response filed by the respondents, counsel submits that as the petitioner had given a No Claim Certificate, he is barred from raising the claim in view of Clause 65 of IAFW-2249.

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

5. It is not disputed that a contract was entered into between the parties, which contains an Arbitration Clause. As to whether the No Claim Certificate or accord and satisfaction had been given by the petitioner voluntarily or under duress is a matter, which will be determined by the Arbitrator. Reliance in this regard is placed upon the judgments of the Supreme Court in *R.L.Kalathia and Co. Versus State of Gujarat, 2011 (2) SCC 400; M/s Ambica Construction Versus Union of India, 2006 (13) SCC 475* and *Union of India Versus Parmar Construction Company, (2019) 15 SCC 682*.

6. Accordingly, petition is allowed. Sh. B.S. Mehandiratta, H. No.2509, Extension 6, Near Kidzee School, Old Sunny Enclave, Kharar,

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SAS Nagar, Mohali, is appointed as the sole 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.

7. Parties are directed to appear before the Arbitrator on 09.02.2024 at 11:00 A.M. at the address mentioned above or at any other place to be fixed with the consent of the parties.

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

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

10. It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement.

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

(SUVIR SEHGAL)
JUDGE

09.01.2024

Kamal

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