
(2013) 11 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Arbitration Case No. 138 of 2013

M/s. Gulshan Rai Jain

APPELLANT

Vs

Housing Board Haryana and Another

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0074

Hon'ble Judges : Sanjay Kishan Kaul, C.J

Bench : Single Bench

Advocate : Ashwinie Kumar Bansal, for the Appellant; Ashwani Talwar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner was awarded tender for work of construction of 129 Nos. G.F. + 129 Nos. FF & SF flats

including internal P.H. and E.I. services in Housing Board Colony, Sector 52, Gurgaon, on 26.11.2009, which was followed by a written contract.

It is the case of the petitioner that the work was completed on 28.02.2012 but there are outstanding dues of the petitioner. The agreement contains

clause 33 as the Arbitration Clause and in view of the disputes, the petitioner invoked the Arbitration Clause vide letter dated 16.05.2013. In

terms of sub clause 7 of Clause 33 requiring security deposit of 7.5% to the total value of the claimed amount, the petitioner sent a bank draft of

Rs. 14,44,500/- alongwith the said letter as the claim raised was of Rs. 1,92,60,000/-.

2. The aforesaid request was, however, rejected vide letter dated 04.07.2013 on the ground that the claim was time barred. It was stated that the

final bill had been paid on 16.08.2012 and in view of arbitration clause 33(9)(e) the claims had to be filed within a period of six months from that

date i.e. on or before 15.02.2013 but they were filed on 16.05.2013. It is informed that post the issuance of this letter, the amount deposited by

the petitioner was also refunded.

3. Learned counsel for the petitioner submits that the time period for making the claim cannot be reduced to suit a clause in view of the judgment in

Pandit Construction Company Vs. Delhi Development Authority and Another, .

4. The aforesaid legal position cannot be disputed by learned counsel for the respondents, who, however, submits that the petitioner should deposit

7.5% of the claimed amount once again as per clause 33(7) whereupon the designated authority will appoint the Arbitrator.

5. In my view the competent authority has lost the opportunity to appoint the Arbitrator, as it wrongly rejected the request of the petitioner to

appoint the Arbitrator by issuing a communication dated 04.07.2013 and refunded the amount which was deposited by the petitioner under the

cover of the letter dated 16.05.2013.

6. Learned counsel for the petitioner infact states that the respondents, after having encashed the bank draft submitted by the petitioner, issued a

bank draft towards refund of the amount which is still lying un-encashed. There appears to be some difference of perception qua this issue but it

would suffice to say that the petitioner should arrange to ensure that the said amount is deposited with the respondents or if it is a bank draft issued

by the respondents then the same is returned back to the respondents. The arbitration would naturally commence thereafter.

In view of the aforesaid, I appoint Justice L.N. Mittal, a retired Judge of this Court, # 235, Sector 16, Chandigarh as sole Arbitrator to enter upon

the reference and adjudicate upon the disputes between the parties.

Petition accordingly stands allowed.

The fee of the Arbitrator be governed by the High Court Rules.

A copy of this order be sent to the Arbitrator without process fee.