

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

A.A No 9/2020

M/s Allied Builders & Engineers Pvt. Ltd. th.
its Managing Director Mohd. Saleem Thakur

...Petitioner(s)

Through: Mr. Sheikh Manzoor, Adv.

Vs.

Chief Engineer, Northern Command (HQ)

...Respondent(s)

Through: Mr Tahir Majid Shamsi, DSGI

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

19.05.2023

1. The present arbitration petition has been filed in terms of Section 11(6) of Arbitration and Conciliation Act seeking appointment of an arbitrator.
2. The petitioner and the respondent entered into an agreement for construction of OTM accommodation for field workshop at Pattan for an amount of Rs. 15,95,16,859.50 under the contract agreement No. CA No. CESZ-33/2014-15 and the work was required to commence in the month of February 2015 and completed by July 2017.
3. As per the aforesaid agreement, there is an arbitration clause under Clause 70 which is reproduced hereunder:-

“70 Arbitration: All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of

the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.”

4. From the above, it is thus clear that in case of dispute between the parties, the matter has to be referred to the arbitrator, however, reference to arbitrator is subject to the condition that in case of abandonment of the works or cancellation of the contract, such reference shall not take place until alternative arrangements have been finalized by the Government so as to get the work completed by or through any other contractor or contractors or agency or agencies.
5. In the present case, it has been submitted by the learned counsel for the petitioner that after cancellation of the work by the authorities, another contractor has been appointed to complete the remaining work, which the petitioner could not accomplish, though the petitioner has completed 70% of the work for which part of the payment has been made, which assertion has not been specifically denied by the respondents.
6. We are of the view that since an alternative arrangement has been made by the authorities for execution of the work, the matter can be referred for arbitration as contemplated under Clause 70 of the Agreement.
7. Accordingly, this Court is satisfied that a case is made out for appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act 1996 and in terms of the agreement.
8. Accordingly, Shri Satish Chander ADG (MES) is appointed as an arbitrator, who shall proceed in the matter in accordance with the provisions of the Act, after affording opportunity of hearing to both the parties, who are at liberty to raise all the preliminary objections

before the arbitrator. The arbitrator shall, thereafter make an award within the time provided in the Act after charging the prescribed fee along with incidental expenses to be shared by the parties.

9. Registry to inform the above said officer and the parties about the appointment of the arbitrator in this matter.
10. Arbitration petition stands closed.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR:

19.05.2023

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