

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

Arb. P. No. 30/2022

M/s Ghulam Mohammad Bhat

...Petitioner(s)

Through: Mr. Saqib Shabir, Adv.

Vs.

Union Territory of JK & Ors.

...Respondent(s)

Through: Ms. Rekha Wangnoo, GA for 1 to 6
Mr. M. A. Qadiri, Adv. for 7 and 8

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, 1996 for appointment of an independent arbitrator.
2. The petitioner entered into an agreement with the respondent for construction of PG Block (Skelton Only) and retaining wall at Islamia College, Hawal, Srinagar (Languishing Project LUP-1699) for a contract price of Rs. 5,65,07,464/-vide Letter of acceptance dated 25th February 2020.
3. The agreement as provided under Clauses 24 and 25 of the General Conditions of Contract provides that any dispute or difference arising between the department and contractor shall be dealt in accordance with J&K Arbitration Act in vogue. Sub-Clause (a) and (b) of the aforesaid Clauses 24 and 25 is relevant and the same is reproduced hereunder:-
 - (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with the agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act 1996. The parties shall make efforts to agree on a sole Arbitrator and only if such an attempt does not succeed then the Arbitral

Tribunal consisted of 3 Arbitrators one each to be appointed by the Employer and the contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the parties to act as presiding Arbitrator shall be considered. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council Indian Road Congress.

(b) The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties, and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Road Congress.”

4. According to learned counsel for the petitioner, a dispute had arisen between the parties on account of price escalation for which the petitioner sought enhancement of the price. Further, it has been submitted that the petitioner has not been paid anything for the work already executed. In view of non-response from the authority for appointment of a sole arbitrator, the petitioner has approached this Court for appointment of a sole arbitrator in terms of the aforesaid Clauses.
5. In terms of the aforesaid Clause, three arbitrators are to be appointed, one each to be appointed by the Employer and the Contractor and the Third arbitrator to be chosen by the two arbitrators so appointed by the parties who shall act as a presiding Arbitrator.
6. In the present case, it has been submitted that for constitution/appointment of the Arbitral Tribunal, the petitioner had written to the authority which also failed to elicit any response from them. Under these circumstances, this Court is of the view that the respondents have failed to take necessary steps in terms of Arbitration Clauses 24 and 25.

7. Since the entire exercise for appointment of individual arbitrators by each of the parties and constitution of Arbitral Tribunal has not fructified, this Court has no option but to appoint Hon'ble Mr. Justice Muzaffar Hussain Attar, (Retd Judge) of this Court 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.
8. Registry to inform the above said officer and the parties about the appointment of the arbitrator in this matter.
9. Arbitration petition stands closed.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR:

19.05.2023

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