

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 52 of 2015 (O&M)

Date of Decision: 17.07.2015

M/s B.R.Kohli Construction Pvt. Ltd.

..Petitioner

versus

The Golden Tone Cooperative Housing Building Society Ltd.

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Ms. Divya Sharma, Advocate, for the petitioner.
Mr. Mohinder Singh Bedi and Mr. Harjot Singh Bedi, Advocates,
for the respondents.

S.J.VAZIFDAR A.C.J.

This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (for short 'the Act') for adjudication of the disputes arising out of an agreement dated 16.09.2011 entered into between the parties. Clause 64.1 thereof contains an arbitration clause which insofar as is relevant reads as under:-

64.1 SETTLEMENT OF DISPUTES AND ARBITRATION

Except where otherwise provided for in the contract all questions, disputes or differences relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as the quality of workmanship or materials used on the work or as to any other question, claim, right matter or this whatsoever in any way arising out of or relating to the contract, design, drawings, specifications, estimate, instructions, orders or this conditions of or otherwise concerning the works of the execution or failure to execute the same whether arising during the progress of work or after the completion of abandonment thereof

shall be referred to two technical person which is been appointed from list three technical members supplied by the company and contractor and the Architect appointed by the society shall be ex-officer member of the team. Subject as aforesaid the provision of the Arbitration Act-1940 or any statutory modifications or reenactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.”

3. The meaning of the words “*Architect appointed by the society shall be an ex-officer member of the team*” falls for consideration. The parties have agreed to the appointment of the two technical arbitrators as required by the clause. The applicant seeks the appointment of the Presiding Arbitrator. The respondent contends that there is no question of appointing the Presiding Arbitrator as the arbitration clause has already named the Arbitrator namely the Architect to be appointed by the society. The petitioner contends otherwise. The petitioner contends that the Architect is only to be on the panel but is not to function as an Arbitrator.

4. The last word in that sentence, namely ‘*team*’ obviously refers to the Arbitral Tribunal. There is no other team that is contemplated. The use of the expression ‘*ex-officer*’ does not support the petitioner’s contention. I presume that the parties meant ‘*ex-officio*’ and not ‘*ex-officer*’. A fair reading of the clause does not suggest, as contended on behalf of the petitioner, that the Architect was only to be of general assistance to the Arbitral Tribunal. The clause provides for the appointment of the two technical members by the parties in the manner provided and the Architect of the society to constitute an Arbitral Tribunal. If the intention was that the Architect of the Society was only to be of general assistance to the Arbitral panel, the parties would have clarified the same in clause 64.1 itself.

5. In the circumstances, the question of this Court appointing the third or the Presiding Arbitrator does not arise. The Arbitral Tribunal includes the Architect appointed by the Society and named in the agreement.

Application stands disposed of accordingly.

17.07.2015
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE