

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-90-2015 (O&M)

Date of decision:- 14.08.2015

M/s Krishan Chand Contractor

...Applicant

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Vivek Khatri, Advocate,
for the applicant.

Mr. Rahul Dev Singh, Deputy Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The parties entered into a contract clauses 19.1 to 19.6 whereof read as under:-

“19.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer under the contract, or that a decision was wrongly taken, the decision will be referred to the adjudicator within 15 days of the notification of the Engineer’s decision, through registered letter/courier or speed post under intimation to both Engineer and competent authority.

19.2 The adjudicator shall give a decision in writing within 30 days of receipt of a dispute, provided that if both the parties to dispute agree, this period may be extended for a longer period, but not exceeding a total of 60 days, from the date of receipt of notification of a dispute.

19.3 The adjudicator will be paid daily at the rate specified in the contract data together with such reimbursable expense of the types as provided in the

contract data and the cost shall be divided equally between both the Engineer and the Contractor. Either party may refer a decision of the adjudicator for arbitration, within 15 days of the receipt of Adjudicator's written decision. If neither party refers the dispute to arbitration within this period, the Adjudicator's decision will be final and binding.

19.4 Dispute in the first instance shall be referred to adjudicator.

19.5 Arbitration will be conducted as per the Indian Arbitration and Conciliation Act, 1996 or any amendments thereof, as mentioned in the contract data.

19.6 Replacement of Adjudicator : Should the Adjudicator resign or die, or should both the Engineer and the Contractor agree that the Adjudicator is not fulfilling his functions in accordance with the provisions of the contractor, a new adjudicator will be appointed by the Engineer as per original procedure mentioned in the contract data. In case of disagreement between the Engineer and the Contractor, to such an appointment, within 30 days, thereof, the Adjudicator will be appointed by the Appointing Authority designated in the contract data at the request of the Contractor within 15 days of receipt of such request."

3. The disputes and differences arose between the parties. The applicant, inter alia, seeks payment of the amounts due under the contract. The agreement is admitted. The only objection to the appointment of an arbitrator is that the applicant failed to refer the matter in the first instance to the adjudicator. However, the claim is for the amounts due for having carried out the work. There is nothing to indicate that the claim is on account of the decision taken by the Engineer which is outside the authority given to the Engineer under the contract. Nor there is anything to indicate that the Engineer has taken the decision refusing payment. In any event, this is merely a technicality which if required to be followed could have been

complied with even during the pendency of this application. Thus, had the objection been sustained, I would have in any event adjourned this petition to enable the applicant to comply with the same.

4. In these circumstances, the application is disposed of by appointing Mr. Justice Ashutosh Mohunta, former Acting Chief Justice of this Court, as the sole arbitrator.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

14.08.2015

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