

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

Arbitration Case No. 113-2016

Date of decision:- 09.12.2016

M/s Kewal Sons

. ...Petitioner

Versus

Union of India & Ors.

...Respondents

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

Present:- Mr. P.S.Rana, Advocate, for the petitioner.

Mr. Pritam Saini, Advocate, for the respondents.

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

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of the sole arbitrator.

2. The parties had admittedly entered into a contract, which contains an arbitration clause. The disputes and differences have also arisen between the parties and the petitioner invoked the arbitration clause.

3. The arbitration clause in so far as is relevant reads as under:-

“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 references shall not take place until after the completion or alleged completion of the works or termination or determination of the Contract under condition No.55, 56 and 57 thereof.

Provided that in the event of abandonment of the works or cancellation of the contract under condition No.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 of agency or agencies.”

It is now not possible to refer the disputes and differences to a serving officer of the respondents.

4. The respondents do not deny that the disputes and differences are liable to be referred to the arbitrator. Their submission is that the application is premature as they have appointed another contractor to complete the work left undone by the petitioner. The petitioner on the other hand contends that the work has been completed. In any event, it would make no difference for admittedly the respondents are now having the work done by another contractor and that itself would lead to the determination of the contract. The clause does not preclude the petitioner from referring the disputes and differences to arbitration till after the completion of the work by the newly appointed contractor. The respondent can also raise claims for any damages or compensation on account of the petitioner having left the work incomplete.

5. The petition is, therefore, disposed of by appointing Mr. Justice Rajive Bhalla, a former Judge of this Court, as sole arbitrator, to adjudicate upon the disputes and differences between the parties.

(S.J. VAZIFDAR)
CHIEF JUSTICE

December 09, 2016
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No