

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

ARB-117-2015 (O&M)
Date of decision:- 05.02.2016

Satbir Khatana Contractor

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Ajay Kumar Gupta, Advocate,
for the petitioner.

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

Mr. G.S. Rana, Advocate,
for respondent No. 3.

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

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

2. Clause 25.A contains a detailed procedure to be followed leading to the invocation of the arbitration clause. The petitioner has followed that procedure. The petitioner is, therefore, entitled to invoke the arbitration clause.

3. The petitioner, however, contends that the respondents have forfeited their right to appoint an arbitrator as they failed to do so after the receipt of the notice invoking the arbitration agreement and the filing of the petition. In fact, the respondents have to date not appointed an arbitrator.

4. The contention is not well founded for the respondents' obligation to appoint the arbitrator has not yet arisen. Clause 25.A.5 of the agreement reads as under:-

“(25.A.5) The appointment of the arbitrator for arbitrating the disputes/differences so referred to arbitration shall be made only by the Financial Commissioner and Principal Secretary to Govt. of Haryana School Education Department after the contractor furnishes to the satisfaction of the Executive Engineer-in-Charge of the work, a

security deposit of a sum determined according to details given below:-

<i>Amount of claim</i>	<i>Security Deposit</i>
<i>Total claim value less than or equal to Rs. 10,000/-</i>	<i>2% of the claim amount</i>
<i>Total claim > Rs. 10,000 but less than or equal to Rs. 1 lac.</i>	<i>5% of the claim amount</i>
<i>Total claim > Rs. 1 lac</i>	<i>10% of the claim amount</i>

5. The respondents' obligation to appoint an arbitrator, therefore, arises only after the contractor furnishes to the satisfaction of the Executive Engineer- in-Charge of the work security deposit of a sum determined in accordance with the above table. The petitioner has not admittedly to date deposited the sum. It is only upon the amount being deposited that the question of the Financial Commissioner and Principal Secretary to Government of Haryana, School Education Department appointing an arbitrator would arise.

6. The contention that it was for the Financial Commissioner and Principal Secretary to first inform the petitioner that he ought to deposit the amount and his having failed to do so the respondents have forfeited their right to appoint an arbitrator in accordance with clause 25.A.5 is not well founded either. Nor do I find well founded the petitioner's case that the amount had to be determined by the Executive Engineer.

7. The satisfaction of the Executive Engineer-in-Charge of the work pertains to the nature of the security deposit. Even assuming that that satisfaction is to be determined in respect of the amount of the security deposit, it would make no difference. The obligation is upon the petitioner to furnish the security deposit after determining the same according to the table provided in the clause itself. The question of the satisfaction of the Executive Engineer-in-Charge regarding the quantum and nature of the security would arise only thereafter. The petitioner has in fact in its notice invoking the arbitration computed and quantified his claim.

There was, therefore, no difficulty in the petitioner correspondingly quantifying the security deposit.

8. In these circumstances, the petition is disposed of by directing respondent No. 2 - Financial Commissioner and Principal Secretary to Government of Haryana, School Education Department to nominate the arbitrator within thirty days of the petitioner furnishing to the satisfaction of the Executive Engineer-in-Charge of the work the security deposit determined in accordance with clause 25.A.5.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

05.02.2016
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