

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

ARB-143-2015

Date of decision:- 12.02.2016

M/s Real Power Utility

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

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

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

Mr. Anil Chawla, Advocate,
for the respondents.

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

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

2. The parties had entered into a construction contract. Clauses 50 and 51 thereof read as under:-

“50. Settlement of Disputes

50.1 Any dispute(s) or difference(s) arising out of or in connection with the contract shall, to the extent possible, settled amicably between the parties.

50.2 If any dispute or difference of any kind whatsoever shall arise between the owner and the contractor, arising out of the contract for the performance of the works whether during the progress for the works or after its completion or whether before or after the termination, abandonment or breach of the contract, it shall, in the first place, be referred to and settled by the empowered officer to be appointed by the owner, who, within a period of thirty (30) days after being

requested by either party to do so, shall give written notice of his decision to the owner and the contractor.

50.3 Unless as hereinafter provided, such decision in respect of any matter so referred shall be final and binding upon the parties until the completion of the works and shall forthwith be given effect to by the contractor who shall proceed with the works with all due diligence, whether he or the owner required arbitration as hereinafter provided or not.

50.4 If after the empowered officer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.

50.5 In the event of the empowered officer failing to notify his decision as aforesaid within thirty (30) days after being requested aforesaid, or in the event of either the owner or the contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty (30) days, as the case may be either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

51. Arbitration

All matters, question, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or in consequences or relating to this contract whether or not obligations of either of both parties under this contract be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to the sole arbitration of the CMD, UHBVN/DHBVN or an officer appointed by the CMD, UHBVN/DHBVN as his nominee. The award of the

arbitrator shall be final and binding on the parties to this contract.

Subject to aforementioned provisions, the provisions of Arbitration & Conciliation Act, 1996 and the rules there under and statutory modifications thereof for the time being in force, shall be deemed to apply to the arbitration proceedings under this clause.”

3. The disputes and differences have admittedly arisen between the parties. The empowered officer was admittedly appointed on 12.08.2015. He, however, expressed his inability to continue. Therefore, another person was appointed as an empowered officer on 06.10.2015. I will presume that the period of thirty days under clause 50 commences from 06.10.2015. The period of thirty days expired on 05.11.2015. The petitioner by its notice dated 03.07.2015 invoked arbitration. The respondents not having appointed an arbitrator in accordance with clause 51, the petitioner filed this petition. Admittedly, no arbitrator has been appointed to date. The respondents have, therefore, forfeited their right to appoint an arbitrator under clause 51.

4. In these circumstances, the petition is disposed of by appointing Mr. Justice J.S. Narang, a former Judge of this Court, as the sole arbitrator.

5. The venue of arbitration shall be the Chandigarh Arbitration Centre.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

12.02.2016

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