

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.154 of 2016

Date of Decision: 18.10.2016

M/s R.K.Jain Infra Project Pvt.Ltd.Petitioner.
Versus

Haryana State, Roads & Bridges Development Corp. Ltd.& others
....Respondents.

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

Present : Mr.Rajesh Goyal, Advocate, for the petitioner.
Mr.P.S.Rana, Advocate, for
Respondent Nos.1,2 and 4.
Mr.Deepak Balyan, Addl. Advocate General,
Haryana,for respondent No.3.

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

This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator to adjudicate upon the disputes and differences between the parties.

2. The petitioner and the first respondent had entered into an agreement, clause 39 whereof reads as under:-

39. In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On request from the Entrepreneur/Agent for appointment of Arbitrator, Managing Director, HSRDC, will appoint an Arbitrator for adjudication of the dispute. The Arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."

3. Disputes and differences arose between the parties. The petitioner addressed a letter dated 17.05.2016 not to the Managing Director of the first respondent with whom the agreement had been entered into but to the Executive Engineer, Provincial Division, Nuh, PWD(B&R) Branch. The petitioner stated that in the event of the claims not being settled within 30 days it would have no option but to invoke the arbitration clause. The petitioner, therefore, requested that the claims be settled within 30 days failing which it would be compelled to invoke the arbitration clause.

4. As the petitioner's claims were not settled, the petitioner addressed a further letter dated 20.06.2016 again not to the first respondent with which it had entered into the agreement but to the State of Haryana and the Engineer-in-Chief, Superintending Engineer and Executive Engineer, PWD (B&R) Branch. By this letter the petitioner invoked the arbitration agreement.

5. It is contended on behalf of the petitioner that the first respondent having failed to appoint an Arbitrator within 30 days of the receipt of the letter dated 20.06.2016 and even before the filing of this petition, the first respondent has forfeited its right to nominate an Arbitrator.

6. The first respondent on the other hand contends that neither of the letters dated 17.05.2016 and 20.06.2016 were addressed to the Managing Director of the first respondent.

They were addressed to the State of Haryana and various officers of the PWD (B&R) Branch. It was necessary for the petitioner to address the letters to the first respondent and/or the Managing Director of the first respondent. The petitioner having failed to do so it cannot be said that the Managing Director forfeited the right to nominate the Arbitrator.

7. Normally the respondents' submission would have been well founded. However, it is obvious that the Managing Director of the first respondent received the letter dated 17.05.2016. This is evident from the fact that the first respondent by a letter dated 09.06.2016 replied to the petitioner in reply to the petitioner's letter dated 17.05.2016. The petitioner, therefore, understandably addressed the letter dated 20.06.2016 invoking the arbitration clause also to the State of Haryana and to the officers of the PWD (B&R). Even this may not have deprived the first respondent's Managing Director the right to nominate the Arbitrator as the letter of invocation was not addressed to him or to the first respondent.

8. However, admittedly this petition which inter-alia contains the letter of invocation dated 20.06.2016 was served upon the first respondent. The fact of the request is averred in the petition. The petition was admittedly served upon the first respondent and the first respondent entered appearance

on 26.08.2016. Even thereafter and to date the first respondent's Managing Director has not nominated an Arbitrator. In these circumstances, there is no reason for the Managing Director of the first respondent not to nominate an Arbitrator. In view of the first respondent's contention that its Managing Director had not earlier been approached with the request of nominating the Arbitrator, the Managing Director could have exercised this right even after being served with the copy of the petition. Admittedly the right has not been exercised to date. In such circumstances the Managing Director must be deemed to have forfeited the right of nominating an Arbitrator.

9. The petition is, therefore, disposed of by appointing Mr. Justice S.K.Jain, a former Judge of this Court, as a sole Arbitrator to adjudicate upon the disputes and differences between the parties.

18.10.2016
ravinder

(S. J. VAZIFDAR)
CHIEF JUSTICE

whether speaking/reasoned	√Yes/No
whether reportable	√Yes/No