

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.202 of 2015 (O&M)
DATE OF DECISION: 05.02.2016

KCC Buildcon Pvt. Ltd.

....Petitioner

versus

Haryana State Roads & Bridges Development Corporation Ltd. and
others

.....Respondents

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

Present: Mr. Sachin Mittal, Advocate for the petitioner

Mr. P.S. Rana, Advocate for the respondents

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

2. The parties had entered into a construction contract, Clause 24.3 of the GCC whereof, in so far as it is relevant, reads as under:-

"GCC Clause (24.3)

- (a) Every party will have the right to appeal against the order of competent authority to the arbitration tribunal, which will be settled in accordance with the Arbitration and Conciliation Act, 1996. In case the amount of work is less than Rs.10.00 Crores, the matter will be adjudicated by sole arbitrator, otherwise by a tribunal of 3 arbitrators. The contractor while invoking arbitration the claimant shall deposit with Engineer a claim fee of @2% of the claim amount. On termination of the Arbitration proceeding, "this fee shall be adjusted in the cost, if any, awarded by the arbitrator (or arbitrator tribunal) against the claimant party and balance remaining after such adjustment, and in the absence of such cost being awarded". The whole of the sum will be refunded within one month of the date of the award. In case of sole arbitrator, Engineer-in-chief will appoint sole arbitrator from the list approved by the Govt. within 60 days from the receipt of application of the contractor. In

case of arbitrator tribunal consisting of 3 arbitrators, one each to be appointed by the employer and the contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the parties to act as presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the council, Indian Road Congress."

3. The value of the work is admittedly more than Rs.10 crores. Thus, although the claim is for an amount less than Rs.10 crores, the disputes and differences, which have arisen between the parties, are to be referred to a Tribunal of three Arbitrators. The petitioner has already appointed its Arbitrator. The question is whether the respondents have forfeited their right to appoint an Arbitrator.

4. The respondents, in reply to the petitioner's notice invoking arbitration, responded by agreeing to refer the further disputes and differences to arbitration provided the petitioner fulfils its obligation of depositing a claim fee of 2% of the claim amount. The petitioner, admittedly, has not done so to date.

In the circumstances, it cannot be said that there was any undue delay in appointing an Arbitrator.

5. Accordingly, the petition is disposed of by directing the respondents' Engineer-in-Chief to appoint an Arbitrator on their behalf in accordance with the arbitration clause. The time to appoint the Arbitrator will exclude the time up to which the claim fee of 2% of the claim amount is deposited. The Arbitrators shall appoint the Presiding Arbitrator.

05.02.2016
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(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE