

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

ARB No.45 of 2016
Date of Decision : 12.08.2016

S.P. Singla Constructions Pvt. Ltd.

..... Petitioner

versus

State of Haryana and another

..... Respondents

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

Present : Mr. Anirudh Wadhwa, Advocate for
Mr. G.S. Bedi, Advocate
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana
for the respondent.

S.J.VAZIFDAR, CHIEF JUSTICE (Oral)

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of arbitrators and constitution of arbitral Tribunal pursuant to fresh notice issued by the petitioner invoking arbitration/seeking substitution dated 20.11.2015 on account of the alleged termination of the mandate of the earlier appointed arbitrators.

2. The parties had entered into an agreement. Clause 25.3 thereof contains arbitration agreement. Clause 25.3 reads as under:

“25.3(a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration

and Conciliation Act, 1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral 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 Roads Congress.

(b) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Council, Indian Roads Congress shall appoint the arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.

(c) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(d) In case of Arbitration by an Arbitral Tribunal, the decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.

(e) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject matter of the arbitration proceedings.”

3. On 13.01.2010, the petitioner invoked the arbitration agreement and nominated the arbitrator. On 02.02.2010, the respondents nominated the arbitrator, who is a retired employee of the respondent. The petitioner challenged the appointment of the arbitrator by the respondent by filing arbitration case No.122 of 2010 in this Court. Vide order and judgment dated 14.07.2011, the petition was dismissed. The petition for special leave to appeal against the order was dismissed by the order of the Supreme Court dated 02.11.2012. The review application filed by the petitioner was also dismissed vide order dated 13.03.2013. The position, therefore, is that both the parties had appointed an arbitrator. The arbitration proceedings have not gone further. The two arbitrators have not appointed the presiding arbitrator. The arbitration clause provides that the presiding arbitrator shall be appointed by the Council, Indian Roads Congress. However, admittedly neither party has approached the Indian Road Congress for the appointment of an arbitrator. The parties, therefore, agreed to the appointment of the presiding arbitrator by this Court.

4. However, the learned counsel appearing on behalf of the petitioner contends that in view of the amendment to the Arbitration and Conciliation Act, 1996, he is entitled to challenge the fresh appointment of the arbitrator by the respondent. It is not necessary to consider this aspect at this stage. In the event of the petitioner making an application in this regard before the Tribunal and in the event of the arbitrator deciding not to proceed with the matter, it would not be necessary to consider this aspect any further. Liberty is, therefore, reserved to the petitioner to raise this issue by filing fresh proceedings, if necessary.

5. In the circumstances, the petition is, therefore, disposed of by appointing Mr. T.S. Doabia (Retd.), a former Judge of this Court as the presiding arbitrator. The Tribunal comprising of the presiding arbitrator and the arbitrators appointed by the parties shall proceed accordingly subject however to the liberty reserved to the petitioner as aforesaid.

It is agreed between the parties that the venue of the arbitration shall be the Chandigarh Arbitration Centre.

August 12, 2016
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(S.J. VAZIFDAR)
CHIEF JUSTICE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No