

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

Arbitration Case No.136 of 2017 (O&M)

Date of Decision: 06.07.2018

M/s NCC Ltd. (formerly known as Nagarjuna Construction Company Ltd.)

.....Appellant

versus

Dakshin Haryana Bijli Vitran Nigam (DHBVN), Vidyut Sadan, Vidyut
Nagar, Hisar.

.....Respondent

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE

Present : Mr. B.S.Patwalia, Advocate, for the appellant
Ms. Neha Rathi, Advocate, for the respondent.

KRISHNA MURARI, C.J.(oral)

Petitioner-applicant has invoked the powers conferred by Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an arbitrator.

2. In 2007, respondent-Dakshin Haryana Bijli Vitran Nigam (DHBVN) invited bids for supply of material, erection, testing and commissioning of new 11 KV single circuit lines with Poles Mounting Distribution Sub-Stations for providing the High Voltage Distribution Systems for an estimated cost of ₹ 216.24 crores. The petitioner was declared successful bidder and was awarded the contract vide letter dated 28.11.2007. A contract was duly entered into between the parties. Clause 56 of the contract contained an arbitration clause in case of a dispute.

3. According to the case set up by the petitioner-applicant under the terms of contract, the guarantee period ended on 22.11.2010 and warranty period expired on 21.11.2013. After the expiry of the warranty period the petitioner-applicant made a request to the respondent to release the bank guarantee to the tune of ₹ 3.37 crores submitted by it. Instead of releasing the bank guarantee, the respondent issued a letter dated 31.03.2015 informing that out of 796 25KVA Distribution transformers installed by the petitioner firm, 9 were found in working condition and 6 were not found on the site and 781 transformers were lying damaged which were to be repaired. The petitioner company was requested to do the needful at the earliest. A reply was submitted by the petitioner stating that as per the terms and conditions of the contract the responsibility of any rectification was only up to the warranty period and not beyond that.

4. A dispute arose between the parties and apprehending encashment of the bank guarantee, the petitioner-applicant made an application under section 9 of the Act before District Judge, Hisar and vide order dated 21.10.2015 an injunction has been passed restraining the respondent from invoking the bank guarantee which is still continuing.

5. Petitioner company thereafter as per clause 55 of the contract made a request on 17.09.2015 for an amicable settlement but the respondent did not respond. Thereafter the petitioner invoking clause 56 of the contract requested the respondent to nominate an arbitrator for settlement of dispute regarding the bank guarantee. A legal notice dated 08.03.2017 was also served. The respondent vide reply dated 17.04.2017 informed the petitioner that no case for appointment of an arbitrator is made out and it is thereafter the present proceedings have been initiated.

6. Heard Mr. B.S.Patwalia, learned counsel for the petitioner and Ms. Neha Rathi, learned counsel for the respondent.

7. After the matter was heard for some time, learned counsel for the parties agreed for appointment of an arbitrator.

8. In view of the aforesaid, Mr. Justice V.K.Bali, former Chief Justice of Kerala High Court, is hereby appointed as sole arbitrator to adjudicate upon the disputes and differences between the parties. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrator's Fees) Rules, 2014 or as may be settled by the parties and the arbitrator.

(KRISHNA MURARI)
CHIEF JUSTICE

06.07.2018

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√