

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

ARB-258-2017 (O&M)

Date of decision:- 15.03.2019

M/s Rohan Rajdeep Infrastructure Pvt. Ltd.

...Applicant

Versus

State of Punjab and another

...Respondents

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

Present:- Mr. Livleen Singh Makkar, Advocate,
Mr. Rishindra Vikram Singh, Advocate,
for the applicant.

Mr. Shireesh Gupta, Sr. Deputy Advocate General, Punjab,
for respondent No. 1.

Mr. Anshul Gupta, Advocate,
for respondent No. 2.

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KRISHNA MURARI, C.J. (ORAL)

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

2. Undisputedly, there exists an agreement between the parties containing a dispute resolution mechanism, which reads as under:-

"20. Dispute Resolution

20.1 Dispute Resolution

Any dispute, difference or controversy of whatever nature regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relating to, or howsoever arising under or in relation to this concession between the parties, and so notified by either party to the other party (the "Dispute") shall be subject to the

dispute resolution procedure set out hereinafter.

20.2. Direct discussion between parties

The parties agree that any dispute that may arise between them shall be first submitted for direct discussion between the parties. For this purpose, the notice of dispute (the "Notice of Dispute") sent by one party to the other party under clause 20.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the dispute and the amount claimed. In the direct discussion proceedings, each party shall be represented by officials or employees with sufficient knowledge and authority over the subject matter of the dispute in order for the discussion to be meaningful. At the discussion proceedings, the party that has given the Notice of Dispute shall present an offer of a settlement, which may form that starting point of discussions between the two parties during the discussion proceedings.

20.3. Arbitration or Adjudication

a. In the event that the parties are unable to resolve the dispute through direct discussion under clause 20.2, the parties shall submit the dispute for adjudication by the Punjab Infrastructure Regulatory Authority constituted under the Punjab Infrastructure (Development and Regulation) Act, 2002.

b. However, in the event that the Punjab Infrastructure Regulatory Authority has not been appointed at the time of the dispute, the parties shall submit the dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996. There shall be a Board of 3 (three) arbitrators of whom each party

shall select 1 (one) and the third shall be appointed by the two arbitrators appointed by the parties.

c. The arbitrators shall make a reasoned award, and any award made pursuant to this clause 20.3 shall be final and binding on the parties as from the date on which it is made, and the concessionaire and the Concessioning Authority agree to undertake to carry out such award without delay.

d. The arbitration proceedings shall be conducted in the English language and in Chandigarh or such other place as may be agreed between the parties.

e. The cost incurred on the process of arbitration including inter alia the fees of the arbitral tribunal and the cost of the proceedings shall be borne by the parties in equal proportions. Each party shall bear its own legal fees incurred as a result of any dispute under this clause 20."

3. Respondents have entered appearance and filed a written statement. It is not being disputed that notice of dispute in accordance with clause 20.2 of the agreement was issued, but since no amicable settlement could be arrived at between the parties, the applicant vide letter dated 05.08.2017 invoked the arbitration clause requesting respondent No. 1 to appoint an arbitrator. However, when the respondents failed to respond, the jurisdiction of this Court has been invoked by making the application.

4. Learned counsel appearing for the respondents vehemently contend that in view of clause 20.3 of the agreement, before taking recourse to arbitration proceedings, the dispute was required to be submitted for adjudication before the Punjab Infrastructure Regulatory Authority constituted under the Punjab Infrastructure (Development and Regulation) Act, 2002 (in short the Act) and hence the application is premature.

5. I have considered the arguments advanced by learned counsel for the respondents.
6. This fact is undisputed that the regulatory authority under the Act came to be constituted by the State Government on 12.03.2018 and much before that the jurisdiction of this Court was invoked by the applicant by making the instant application. Further, Section 5 of the Act provides for one Chairman and two members and it is an admitted case that only Chairman and one member has been appointed and, thus, the constitution is not in accordance with law and hence the regulatory authority cannot be held to be in place so as to proceed for adjudication of the dispute.
7. In such circumstances, the only alternative available is to appoint an arbitration board in accordance with the terms of the agreement between the parties. Clause 20.3(b) provides for a Board of three arbitrators out of which the two parties have to select one arbitrator each and then the presiding arbitrator shall be appointed by the arbitrators so selected by the parties.
8. Learned counsel for the applicant nominates Mrs. Justice Raj Rahul Garg, a former Judge of this Court, to be one of the arbitrators, whereas, learned counsel for the respondents nominate Mr. Jatinder Bir Singh, I.A.S. (Retd.), Chairperson of the Punjab Infrastructure Regulatory Authority as the second arbitrator. The two arbitrators may appoint the third presiding arbitrator. The fee shall be as may be settled by the parties with the arbitrators.
9. With the aforesaid observations and directions, the application stands disposed of.

(KRISHNA MURARI)
CHIEF JUSTICE

15.03.2019
Amodh

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