

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

ARB-375-2018 (O&M)
Date of decision:- 18.01.2019

Adhmi Cooperative Society, Khanna Road, Krishanpura
...Applicant
Versus

Haryana Power Generation Corporation Ltd. and another
...Respondents

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

Present:- Mr. Ramesh Kumar, Advocate, for the applicant.

* * * *

KRISHNA MURARI, C.J. (ORAL)

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

2. There is no dispute about the fact that the agreement between the parties contains an arbitration clause i.e. clause 81. The said clause reads as under:-

"81 If any question, dispute, difference or objection whatsoever arises in any way connected with or arising out of the instrument or meaning of operation or any part thereof or the rights, duties or liability of either party, including the termination of the contract by either party and correctness thereof, at any stage whatsoever, it shall be referred to the arbitration of the

Managing Director, HPGCL or his nominee not below the rank of Superintending Engineer subject to the following conditions:-

i) That in the first instance before referring the matter to arbitration, it shall be referred by the contractor for being settled by the Engineer-in-Charge of the work at the time of such reference in writing. The Engineer-in-Charge shall convey his decision in writing to the contractor within a period of 90 days from such a request in writing by the contractor. The decision given by the Engineer-in-Charge shall be final and binding upon the contractor except where he moves the Engineer-in-Charge in writing for reference of such a claim or dispute to arbitration within a period of 60 days of receipt of the decision of the Engineer-in-Charge in writing. In case the contractor fails to make a written request within the stipulated period, the decision so conveyed to him by the Engineer-in-Charge will be final and binding on both parties. In case the Engineer in Charge fails to convey his decision in writing within 90 days, as referred to above, the contractor may, make a request to the Managing Director within 60 days of the expiry of the said 90 days to refer the matter to arbitration and the same shall be referred to arbitration in the manner

provided hereinafter. The work under the contract shall not be stopped and shall continue during the arbitration proceedings."

3. Clause 81(i) clearly provides that in the first instance before referring the matter to arbitration, the dispute shall be referred to the Engineer-in-charge of the work by the contractor. In case, the Engineer-in-charge fails to convey his decision within 90 days, the contractor will be at liberty to make a request to the Managing Director within 60 days of the expiry of the said 90 days to refer the matter to arbitration. The petitioner instead of referring the matter to the Engineer-in-Charge in the first instance directly approached the Managing Director.
4. In such view of the matter, the application made is premature. It is incumbent upon the applicant to first refer the dispute to Engineer-in-Charge in terms of Clause 81 instead of referring the matter to the Managing Director for settlement of dispute.
5. As such, the application stands dismissed as premature with liberty to the applicant to first approach the Engineer-in-Charge.

(KRISHNA MURARI)
CHIEF JUSTICE

18.01.2019
ravinder

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