

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

Sr. No.235

ARB-43-2018 (O&M)

Date of decision: 02.12.2019

Vir Bhan Mittal

....Petitioner

versus

Dronacharya People Representative Co-op GHS

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajiv Sharma, Advocate
for the petitioner.

Mr. Anil Kumar Rana, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short – the Act) for appointment of an Arbitrator in a domestic commercial dispute.

The petitioner and the respondent entered into an agreement dated 15.12.2013 for construction of a multi-storey building. Clauses 11.3, 11.4 and 11.5 of the agreement which contain the Arbitration clause, method with regard to appointment of the panel of three Arbitrators and seat of Arbitration read as under:-

“11.3 In the event that the Parties have been unable to resolve a Dispute within a period of ten (10) Business Days from the date of the written request for good faith consultation, such Dispute shall be finally settled by arbitration according to the procedures set forth in Clauses 11.4 to 11.5 below.

11.4 Upon the failure of the Parties to resolve a Dispute within the ten (10) Business Days

period set out in Clause 11.3, such Dispute shall be referred to arbitration to be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 by an arbitrator mutually agreed upon by the Parties. In the event, the Parties are unable to agree upon the name of the arbitrator, to whom the Dispute may be referred to, within ten (10) Business Days from the date on which such Dispute is referred to arbitration by either of the Parties, such Dispute shall be referred to a panel of 3 (three) arbitrators, out of which 1 (one) arbitrator shall be appointed by the CGHS and the Contractor each and 1 (one) by the Contractor and DPR-CGHS, jointly. The 2 (two) arbitrators so appointed shall mutually appoint the third arbitrator. The prevailing Party in any dispute shall be awarded attorney's fees and other costs.

11.5 The seat of arbitration shall be Gurgaon the language of arbitration shall be English. The decision of such arbitration shall be binding and conclusive upon the parties.”

On disputes having arisen between the parties, the petitioner, through a registered letter dated 04.12.2017, by invoking the arbitration clause, proposed the name of one Arbitrator and called upon the respondent for nominating its Arbitrator. In response to the aforesaid letter, the respondent wrote to the petitioner stating therein that the respondent had no authority to appoint an Arbitrator. It is in these circumstances that the present petition has been filed for the aforesaid relief.

Though clause 11.4 of the agreement provides for a panel of three Arbitrators to go into the disputes between the parties, learned counsel for the parties jointly submit that a sole Arbitrator be appointed.

After hearing learned counsel for the parties, to adjudicate upon

the disputes between them, Justice Sudershan Kumar Misra, a retired Judge of the Delhi High Court is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Justice Sudershan Kumar Misra (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with Fourth Schedule of the Act, as amended.

As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients also of the Arbitrator, the venue of the Arbitration shall be at New Delhi, where Justice Sudershan Kumar Misra (Retd.) resides.

A copy of the this order be forwarded to Justice Sudershan Kumar Misra (Retd.) at the given address:

H.No.C-4/25,
Safdar Jung Development Area,
New Delhi.

After seeking the convenience of the Arbitrator, the parties are directed to appear before the Arbitrator on 14.12.2019 at 11 A.M. or any other date suitable to all concerned.

The matter is disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

December 02, 2019
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No