

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

ARB NO. 5 OF 2019 (O&M)

DATE OF DECISION : 10.12.2020

M/s Kaushalya Contractors & Developers (P) Limited ...Petitioner

Versus

Indian Oil Corporation Limited

...Respondent

ARB NO. 11 OF 2019 (O & M)

M/s Kaushalya Contractors & Developers (P) Limited ...Petitioner

Versus

Indian Oil Corporation Limited

...Respondent

ARB NO. 22 OF 2019 (O & M)

M/s Kaushalya Contractors & Developers (P) Limited ...Petitioner

Versus

Indian Oil Corporation Limited

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present: - Mr. Karan Kaushal, Advocate with
Mr. M.K Vashishtha, Advocate
for the petitioner(s).

Mr. Paul S. Saini, Advocate,
for the respondent (in ARB Nos.5 & 11 of 2019).

Mr. A. S. Chadha, Advocate,
for the respondent (in ARB No.22 of 2019).

(Presence has been marked through video conferencing)

ARUN MONGA, J. (ORAL)

Petitioners in the above titled cases have approached this Court

under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for

appointment of an independent Arbitrator to adjudicate the disputes between the parties. For brevity, facts and recitals are being taken from case bearing ***ARB NO. 5 OF 2019.***

2. Petitioner is a company registered under the Companies Act, engaged in the business of construction and development of lands and buildings, while Respondent is a public sector undertaking.

3. Respondent floated a tender bearing No. RPRC 134250 for extension of Guest House at Panipat Refinery Township which included interior and electrification work. Petitioner was awarded the afore said contract for a total sum of Rs.3,04,58,652.24 vide work agreement Letter of Acceptance bearing No. 24040557 dated 31.12.2013 followed by execution of a contract agreement dated 08.04.2014. Relevant work was to be completed within 12 months from the date of Letter of Acceptance. The site for this project was handed over to the petitioner on 14.01.2014. Work was to be completed on or before 13.01.2015. The petitioner completed the entire work on 01.09.2016, after a delay of 19 months. The said delay is stated to have occurred on account of non-cooperation rendered by the respondent. The certificate of completion dated 25.03.217 (annexure P-4) was duly signed by the authorized representative of the respondent. A final bill dated 22.010.2016 (Annexure P-5) amounting to Rs.3,39,34,030.70 was prepared. Out of the said amount, the respondent certified an amount of Rs.2,61,48,522.68, which was transferred to the account of petitioner . Thereafter, the petitioner made several requests time and again to pay the outstanding amount but to no avail. The petitioner vide legal notice dated 30.05.2018 (Annexure P-19) then invoked arbitration clause for appointment of sole Arbitrator. However, no Arbitrator was appointed and hence the instant petition.

4. Respondent has filed short reply denying all the averments contained in the legal notice/petition herein. A preliminary objection has been taken that before approaching this Court, the petitioner was bound to raise a claim before the General Manager of the respondent as per Clause 9.0.2.0 of GCC (contract).

5. Heard arguments of the respective learned counsels. The learned counsels for both parties are *ad idem* on the import of ratio laid down by Delhi High Court in case titled ***NCC Limited v. Indian Oil Corporation Limited***¹. However, what transpires herein is that, as was done in the said NCC case, before seeking appointment of Arbitrator, the petitioner in the instant case indeed did not first approach the General Manager, to explore the possibility of settlement between the parties by way of pre-arbitration mediation/conciliation process, as per the arbitration clause contained in the contract.

6. On a query of this Court, learned counsel for the petitioner/claimant submits that though a legal notice dated 30.05.2018 (Annexure P-19) was cause, directly seeking invocation of arbitration proceedings by appointment of an Arbitrator, but prior thereto, in terms of Clause 9.0.2.0, supra, no conciliation/pre-arbitration meetings have actually taken place between the parties, as no such formal request for the same was ever made to the GM.

7. That being the position, objection of the respondent is sustained. I am of the view that the petitioner has to first approach the General Manager for redressal of its grievance in accordance with Clause 9.0.2.0 to explore conciliation/pre-arbitration settlement. In case still aggrieved with the decision taken by the General Manager, it may then further invoke arbitration proceedings, if so advised.

8. In the premise, the instant petition is directed to be treated as an application to seek adjudication of the dispute by way of pre-arbitration/conciliation proceedings. Basis thereof, the General Manager shall proceed to pass appropriate orders by disposing of the same within a period of three months from today.

9. All the aforesaid petitions are disposed of in above terms.

(ARUN MONGA)
JUDGE

10.12.2020
Shalini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No