

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-1971-2020(O&M)
Date of Decision: 24.07.2020

M/s MSKEL Garg JV

--Petitioner

Versus

Municipal Corporation & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana & Mr. Japjit Johal,
Advocates for the petitioner.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Deepak Balyan, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

In the instant revision petition challenge is to the order dated 18.6.2020 (Annexure P-1) passed by the learned Additional District Judge-cum-Presiding Officer, Commercial Court, Sonipat whereby an application moved by the respondents herein under Section 8 of the Arbitration and Conciliation Act, 1996 has been allowed and the suit filed by the plaintiff/petitioner has been disposed of by directing the petitioner to approach the Arbitrator.

Brief facts may be noticed.

The Municipal Corporation, Sonipat floated a tender for rehabilitation of drain no.6 into RCC Storm Water Drain along with its covering and construction of other city drains in Sonipat town under AMRUT Program. The petitioner being the lowest bidder was allotted the

tender and pursuant thereto an agreement dated 8.8.2017 was executed between the petitioner and the respondent-Municipal Corporation. Apparently the scope of work was thereafter modified/expanded but it would not be necessary for this Court to delve into the details thereof. Pleadings on record indicate that the respondents imposed a penalty upon the petitioner vide order dated 14.6.2018 amounting to Rs.8.7 crores. Copy of the letter/order dated 14.6.2018 stands appended as Annexure P-9. The petitioner availed of a remedy of appeal against the order of penalty and which stands declined by the Superintending Engineer. On 10.10.2019 respondents further passed an order whereby the work allotted to the petitioner was terminated.

It is at such stage that the plaintiff filed a suit for declaration to the effect that the order dated 14.6.2018 imposing penalty as also the order dated 5.9.2019 (Annexure P-16) affirming the same as well as order dated 10.10.2019 terminating the contract are illegal, null and void. The defendants therein put in appearance and filed two applications. (i) Under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the parties to the sole Arbitrator (ii) application under Order 7 Rule 11 CPC for rejection of the plaint.

The Presiding Officer, Commercial Court, Sonipat vide order dated 18.6.2020 has allowed the application moved by the respondents under Section 8 of the Arbitration and Conciliation Act, 1996 and has disposed of the suit filed by the petitioner herein in terms of directing the petitioner firm to approach the Arbitrator in due course.

It is against such brief factual backdrop that the instant revision petition has been filed assailing the order dated 18.6.2020 passed by the

Presiding Officer, Commercial Court, Sonipat.

Learned senior counsel representing the plaintiff/petitioner/contractor has very fairly conceded that in so far as the issue of termination of contract is concerned, the same would be open to be referred and to be adjudicated during the course of arbitral proceedings.

Accordingly, to such extent the challenge to the impugned order does not sustain. The impugned order dated 18.6.2020 (Annexure P-1) referring the parties to the sole Arbitrator with regard to the action of the respondent Corporation terminating the contract is upheld.

As regards the second issue pertaining to imposition of damages/penalty, learned senior counsel representing the petitioner has adverted to the Exception Clause i.e. Clause 25(A)(v) of the contract entered into between the parties to urge that for such matter the petitioner would have no other remedy but to take recourse to filing a suit before the competent civil court.

There would be no necessity of dealing with the contention as afore-noticed as Mr. B.R. Mahajan learned Advocate General, Haryana representing the respondent-Corporation takes a stand that as per terms and conditions of the contract the issue regarding imposition of damages/penalty is final and concedes that such issue could not have been referred to the Sole Arbitrator.

In view of the above, suit filed by the plaintiff/petitioner limited to the extent of seeking a declaration qua the damages/penalty would stand revived. But for such modification the impugned order dated 18.6.2020 (Annexure P-1) referring the parties to the Sole Arbitrator is affirmed.

Parties to appear before the learned Additional District Judge-cum-Presiding Officer, Commercial Court, Sonipat on 11.8.2020.

Suffice it to observe that it would be open for either party to raise all contentions/objections in accordance with law even as regards the declaration sought qua damages/penalty imposed.

Revision petition is disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

24.07.2020

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No