

In the High Court of Punjab and Haryana, at Chandigarh

Arbitration Case No. 91 of 2021

Date of Decision: 23.03.2021

M/s Kuldip Construction Company

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anand V. Khanna, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Standing Counsel for
Union of India-respondents.

Anil Kshetarpal, J.

Through this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), a prayer has been made to appoint/nominate an independent person as a Sole Arbitrator to adjudicate the disputes/differences between the petitioner and the respondents arising out of the work contract No.CA NO. GE/JAL (W) 27/17-18 of 2017-18 i.e. Provision of Certain repairs to Buildings of 27 AD Regt., 167 Med. Regt., 62 Engr. Regt. and 987 AD Jalandhar. It will be noted here that existence of the arbitration clause in the agreement is not in dispute. The respondent had issued general conditions of the contract which contained the arbitration clause. Clause 70 of the general conditions of the contract read as under:-

“70. Arbitration:- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E.F or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 thereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 thereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner initiate against the Government's right of recovery from the contractor as provided in Condition 67 thereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him

may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, ex parte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The venue of Arbitrator shall such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final and binding on both parties to the Contract”.

The petitioner was awarded civil construction work which is claimed to have been completed, however, the entire amount thereof has not been released. A request for appointment of an Arbitrator, submitted on

07.02.2020, has failed to invoke any positive response.

In any case, now, on or after 23.10.2015, a party to the contract does not have right to act as an Arbitrator or nominate an Arbitrator. On notice of motion, Mr. Praveen Chander Goyal, Advocate, has entered appearance on behalf of the respondents.

The only objection taken by learned counsel for the respondents is that a previous petition filed by the petitioner, was permitted to be withdrawn with liberty to file fresh one on the same cause of action vide order dated 22.07.2020, which reads as under:-

“The petition has been taken for hearing through video conference due to Covid-19 pandemic.

After arguing for some time, learned counsel for the petitioner prays that certain instructions with regard to the claim of the petitioner such as whether, the petitioner-company has raised the bill in respect of the items, which have been appended alongwith Annexure P-3 as Appendix 'A' are to be obtained so as to be incorporated in the petition, hence, petitioner be allowed to withdraw this petition with liberty to file a fresh one on the same cause of action.

Dismissed as withdrawn, with the liberty, as prayed for”.

The filing of the previous petition, particularly when it was permitted to be withdrawn with liberty to file a fresh one on the same cause of action, does not affect the maintainability of this petition.

As per the arbitration clause, an Engineer Officer is to be

appointed as an Arbitrator. However, no qualification of an Arbitrator has been specified. As per the tentative claim, the petitioner claims the amount under the following heads:

<i>Serial No.</i>	<i>Brief Description of Claims</i>	<i>Approximate amount</i>
1.	<i>Payment of final bill</i>	<i>Rs.274929.00</i>
2.	<i>Payment for certain items of work got done but not paid</i>	<i>Rs.1000000.00</i>
3.	<i>Reimbursement of loss caused due to delay and restrictions in making payments</i>	<i>Rs.200000.00</i>
4.	<i>Reimbursement of damages caused due to breach of contract by the deptt. including delay in handing over of sites, delayed decisions resulting in prolongation of contract period.</i>	<i>Rs.500000.00</i>
5.	<i>Interest past, pendente lite and future @ 10% P.A.</i>	
6.	<i>Cost of reference to arbitration and court and legal expenses</i>	<i>Rs.250000.00</i>

Keeping in view the aforesaid facts, this Court is of the considered view that the matter can very well be decided by a retired High Court Judge who has rich experience of the judicial work. Hence, this petition is allowed. This Bench finds it appropriate to nominate Hon’ble Mr. Justice S.N.Aggarwal, Former Judge of Punjab and Haryana High Court, as an Arbitrator.

(a) Appointment of Arbitrator: Hon’ble Mr. Justice S.N.Aggarwal, Former Judge of Punjab and Haryana High Court, is hereby nominated to act as the Sole Arbitrator to decide the disputes and differences between the parties in both the petitions.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the learned counsel for

the petitioner within one week from the date of the order being uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal address:

Arbitrator : Hon'ble Mr. Justice S.N. Aggarwal, Former Judge, Punjab and Haryana High Court.

Address : House No. 1458, Sector 40B, Chandigarh.

Mobile No. : +91 9876716983

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act, 1996 to the Registrar General of this Court, referencing this arbitration petition, as soon as possible, and in any case, sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Registrar General on the file of this application. Copies will be given to both sides.

- (d) **Appearance before the Arbitrator:** The parties will appear before the learned Sole Arbitrator physically or through video conferencing on such date and at such place as he nominates and will obtain appropriate directions in regard to fixing a schedule for completing the pleadings, etc.

(e) Contact/communication information of the parties:

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

(f) Application under Section 16:

Liberty to either side to file an application before the learned Sole Arbitrator under Section 16 in regard to any matter or claim and its arbitrability or with regard to the jurisdiction and competency of the arbitral tribunal.

(g) Interim Application(s):

(i) Liberty to both the parties to make an interim application or interim applications including (but not limited to) an interim application under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

(h) Fees:

The fees of Arbitral Tribunal shall be governed by IVth Schedule of the Arbitration and Conciliation Act, 1996.

(i) Sharing of costs and fees:

Parties agree that all arbitral costs and the fees of the arbitrator will be borne by both sides in equal shares at the first instance.

(j) Venue and seat of arbitration: The venue of arbitration shall be at such place or places as may be fixed by the Sole Arbitrator in his sole discretion.

(k) Contentions kept open. All contentions before the learned Sole Arbitrator are specifically kept open.

It is clarified that it is open to the respondents to file a counter-claim, if so advised, before the learned Sole Arbitrator, within such time and subject to such terms as the learned sole Arbitrator may direct.

Costs of the arbitration proceedings may be included by both the sides in their claims before the learned Sole Arbitrator.

(Anil Kshetarpal)
Judge

March 23, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No