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

**ARB No.23 of 2017 (O&M)
Date of Decision: 22.09.2022**

**M/S VISHAV CONSTRUCTION COMPANY, TH ITS PARTNER
SUBASH CHANDER**

.....Petitioner

**Vs
UNION OF INDIA AND ANR**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute related to the work namely “repairing of existing damage/broken concrete bed block etc. and flooring of the washing line No.1 and 2 in Amritsar Yard and replacement of GI pipe lying in mechanical work shop at Amritsar Railway, under ADEN/ASR. as per clause 64 of the conditions of contract agreement dated 24.06.2014.

[2]. Notice of motion was issued on 17.02.2017. Written statement has also been filed by the respondents/Union of India. Petitioner has also filed rejoinder along with Annexures P-4 to P-7 and the same has already been taken on record vide order dated 09.02.2018. On 25.07.2022, none appeared on behalf of the respondents and following order was passed by the Co-ordinate Bench of this Court:-

“Learned counsel for the applicant fairly informs that Mr. Nitin Kumar, Advocate, who had been representing respondents is no longer on the panel.

List on 22.09.2022.

Office of Mr. S.P. Jain, Additional Solicitor General of India, be notified of the date fixed.

*25.07.2022
riya”*

**(LISA GILL)
JUDGE**

[3]. Today also, there is no representation on behalf of learned counsel for the respondents/Union of India despite the fact that office of learned Addl. Solicitor General of India has duly been informed by the Registry.

[4]. Learned counsel for the petitioner has addressed his arguments to the effect that existence of work agreement having arbitration clause No.64, is not in dispute. Learned counsel submits that the value of claim of the petitioner is about Rs.78 lakhs for which arbitration clause has already been invoked on 15.01.2016 (Annexure P-3). The stand taken by the

respondents/Union of India in para no.3 of the preliminary objections is to the effect that the petitioner had never presented his final claim on any of the alleged disputed issue prior to 15.01.2016 and, therefore, the claim was belated as clause 64 of the contract agreement was not complied with. According to the said clause, if the Railways fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matter” referred to in clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matter, shall demand in writing that the dispute or difference be referred to Arbitration.

[5]. Learned counsel for the petitioner in terms of replication submits that prior to 15.01.2016, the petitioner had already represented to the Senior DEN III, Northern Railway Ferezepur vide representation(s) dated 06.08.2015 (Annexure P-4), 20.07.2015 (Annexure P-5), 25.07.2015 (Annexure P-6) and 06.07.2015 (Annexure P-7) giving details of the claim made by the petitioner and the aforesaid representations were never adverted to by the respondents.

[6]. All these issues are disputed issues which are to be adjudicated by the Arbitrator on proper reference of the matter. Consideration of the issue would give rise to arbitral issue which is required to be adjudicated by the Arbitrator. The contract

agreement is not in dispute. Clause 64 of the conditions of contract agreement dated 24.06.2014 is also not in dispute. Admittedly, the petitioner has undertaken the work assignment. The claim has been rejected solely on the interpretation of sub-clause 64 of the contract agreement. The respondents have denied the claim Nos.1 to 11 in the written statement. The assertion and denial of the parties are required to be adjudicated by the sole Arbitrator.

[7]. Having gone through the material on record, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1**. Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or

the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[8]. In my considered opinion, the plea of the respondents can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforecited case laws.

[9]. Keeping in view the facts and circumstances of the case, I hereby appoint Mr. S.P. Singh, District and Sessions Judge (Retd.) # 151 Tribune Mitra Vihar, Sector 29, Panchkula, Mobile No.9416876888 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him

as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[10]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the both the parties in equal ratio.

[11]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[12]. A copy of this order be dispatched to the Arbitrator at the following address:-

Mr. S.P. Singh, District and Sessions Judge (Retd.)
151 Tribune Mitra Vihar, Sector 29, Panchkula,
Mobile No.9416876888

[13]. Petition stands disposed of accordingly.

September 22, 2022	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No