

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

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ARB No. 255 of 2018 (O&M)

Date of Decision: 15.11.2022

WALIA CO-OP L/C SOCIETY LTD

.....Petitioner

Vs

**GOVT OF HARYANA PWD WATER SUPPLY AND
SANITATION DEPTT**

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vikasdeep Singh, Advocate
for the petitioner.

Mr.Sumeet Gupta, Addl.A.G.Haryana

RAJ MOHAN SINGH, 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 to adjudicate the dispute between the parties arising out of contract agreement dated 08.09.2008.

Vide the aforesaid agreement, work assignment was allotted to the petitioner for providing adequate water to some localities in IGDVVA in various villages covered under W/S and Sanitation Sub Tehsil Kharkhoda i.e. “Laying of AC PVC

pipeline, construction of brick sluice value chamber and all other works contingent thereto”.

According to the petitioner, after completion of work assignment even on extended note, needful in the context of releasing payment was not done by the respondent department. Recurring cause of action accrued to the petitioner for which an arbitration clause was invoked owing to no response from the respondent. Invocation of arbitration clause took place on 20.02.2014 claiming an amount of Rs.3,74,649/- and Rs.5,25,258/- along with interest and also for appointment of an Arbitrator in order to adjudicate the dispute in the context of aforesaid amount. The prayer for appointment of the Arbitrator was ultimately refused by the respondent on 04.12.2015. Initially an application was filed before the District Judge, Sonapat for appointment of the Arbitrator and the same was got dismissed as withdrawn for want of jurisdiction on 12.04.2018 with the liberty to avail legal remedy that is why the present petition came to be filed.

Notice of motion was issued on 07.09.2018. Perusal of the record would show that the respondent was duly served. No reply has been filed till date. In a way the pleadings of the petitioner have gone unrebutted.

Learned counsel for the petitioner placed reliance upon **Civil Appeal Nos.2879-2880 of 2018 (arising out of SLP (C) No.19545-19546 of 2016)** decided on 15.03.2018 i.e.

Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755 to contend that arbitral proceedings started prior to commencement of Amending Act of 2015 are saved from inapplicability thereof.

Section 26 of the Amending Act reads as under:-

“26. Act not to apply to pending arbitral proceedings- Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

Since the petitioner has already invoked the arbitration clause No. 25 (a) (2) of the contract agreement, therefore, Engineer-in-chief is the competent authority to nominate any Arbitrator in the present case. Since the agreement in question was executed prior to the amendment Act of 2015 and the clause does not prescribe any application of future amendment to the Act, therefore, Engineer-in-chief would be the competent authority to appoint any Arbitrator in view of the law laid down by the Hon'ble Apex Court in **Bharat Broadband Network Limited's case (supra)**.

In view of the aforesaid position, this petition is

disposed of in view of the Arbitration clause No. 25 (a) (2) of the contract agreement. Engineer-in-chief is directed to appoint an Arbitrator, who will adjudicate the dispute between the parties in accordance with law. All the issues including the issue of limitation shall be decided by the Arbitrator in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

15.11.2022

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whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no