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

**ARB No.34 of 2016(O&M)
Date of Decision: 05.12.2022**

M/s V.S. Saini

.....Petitioner

Vs

State of Punjab Etc.

.....Respondents

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

Present:Mr. Rajeev Dev Sharma, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl., A.G, Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate the dispute between the parties arising out of execution of work of restoration of french excavated by the sewerage department for lying sewerage along National Highway No.20 at Pathankot, District Pathankot RD 3242 top 4745 feet.

[2]. Learned counsel for the petitioner submits that the

allotment of work was done vide allotment letter dated 03.05.2011. The tender cost was worked out to be Rs.41,42,176/- after the contract agreement. It was admitted by the Executive Engineer through the letters that the work was in progress and stone metal was being used. In the night of 26.06.2011, a heavy shower rains lashed the area for just 30 minutes and whole of the road settled down due to the reason that refilling of earthwork on piper was not completed and was full of voids and cavities. Number of representations were made by the petitioner to the respondents for settling the matter. Various efforts made by the petitioner for settlement of sub-base the road had gone to a irreparable stage. The talks between the parties could not reach to any logical end.

[3]. Petitioner had completed the work to a large extent by incurring huge expenses, but the same was not accepted by the respondents. The dispute arose between the parties for which the petitioner has already invoked the Dispute Redressal System in terms of Clause 25(ii), which reads as under:-

“Whether before its commencement or during the progress of Project/Work or after the termination, abandonment or breach of the contract, the dispute shall, in the first instance, be referred for settlement to the Engineer of the work and he shall, within a period of sixty days after being requested in writing by the

contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so referred shall, subject to arbitration as hereinafter provided, be final and binding upon the Contractor. In case the work is already in process, the contractor shall proceed with the execution of work on receipt of the decision of the Engineer as aforesaid with all due diligence, whether any of the parties requires arbitration as hereinafter provided or not.”

[4]. In the reply filed by the respondents, the respondents with reference to Annexure R-5 submits that the Agreement No.2 of 2011-12 has already been cancelled and earnest money submitted by the petitioner had already stood forfeited as per Clause 31.3 “Instructions of Bidders”. According to the respondents, failure of the successful bidder to comply with the requirements of Sub Clause 31.3 shall constitute sufficient grounds for cancellation and forfeiture of the bid security of the contract agreement. The respondents have also taken an objection with regard to the non-signing of the contract agreement regarding execution of work. The relevant part of the communication dated 05.05.2014 forming subject matter of Annexure R-6/T reads as under:-

“According to report of Executive Engineer, Central Works Division, Pathankot, you have not signed the contract agreement regarding the work, mentioned in the subject cited above. Apart from this

which works had done by you, the same work had not been done according to terms and conditions of the agreement. Due to this reason during the inspection, this work has been rejected by Sh. Ajmer Singh that time Superintending Engineer and many times you are given directions/advises to rectify the above mentioned by Executive Engineer, Central Works Division, Pathankot, but you have not done so. Due to this reason The Executive Engineer, Cnetral Works Division, Pathankot have to complete this work from other agency. When, the contract agreement has not been signed between the parties, then how the arbitrator could not be appointed for resolve the dispute between the parties. Therefore, appeal dated 06.03.2014 has been rejected/cancelled.”

[5]. Perusal of the stand taken by the respondents would show that the claim of the petitioner cannot be considered as the contract agreement was not signed by the petitioner. The execution of work by the petitioner has not been denied and the bid security has been forfeited in view of Sub Clause 31.3 “Instructions of Bidders”. The stand of the respondents as regards the non-performance of the work assignment according to the terms and conditions of the agreement, runs contrary to the stand with regard to non-signing of the contract agreement. Both the stands are verticularly opposite to each other.

[6]. The arbitration clause itself shows that during progress

of the work and even after termination of the work assignment, the dispute shall in the first instance be referred for settlement with further mechanism of resolution of dispute. The plea of limitation as regards the accrual of cause of action in the facts and circumstances of the case, would be a mixed question of fact depending upon the nature of evidence to be led by the parties before the Arbitrator. The petitioner has tentatively valued its claim to the tune of Rs.19,50,455/- subject to the final adjudication by the Arbitrator.

[7]. Having considered the submissions made by the learned counsel for the parties, I find that in view of execution of work which has not been denied by the respondents, the objection as regards the non-signing of the contract agreement, cannot be translated in favour of the respondents.

[8]. It is a settled principle of law that the agreement, even if not signed by the parties, can be culled out from the correspondence between the parties. The Court has to adopt a pragmatic approach, particularly in the light of execution of work done by the petitioner. The communication between the parties including the forfeiture of the bid amount is also indicative of the fact that the execution of work was done by the petitioner to some extent. According to Section 7(4) (b) of the Arbitration and Conciliation Act, the agreement can be culled out from an

exchange of letters, telex, telegrams or other means of communication which provide a record of agreement. Reference can be made to **Govind Rubber Limited Vs. Louids Dreyfus Commodities Asia Private Limited, (2015) 13 SCC 477**.

[9]. In view of factual position, I deem it appropriate to appoint Sh. S.P. Arora, Advocate, House No.716, Sector-7-C, Chandigarh, Mobile No.9501311333 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 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 both the parties equally.

[11]. The seat of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

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

Sh. S.P. Arora, Advocate,

House No.716, Sector-7-C, Chandigarh,
Mobile No.9501311333

[13]. Petition stands disposed of accordingly.

05.12.2022	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No