

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

ARB No. 309 of 2018

Date of Decision: 26.08.2022

M/s Gupta Tech

.....Petitioner

Vs

**The Haryana State Coop Supply & Marketing
Federation Ltd. & Anr**

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Behl, Advocate and
Mr. Sachin Jain, Advocate
for the petitioner.

Mr. S. K. Mahajan, Advocate
for respondent No. 1.

Mr. Minderjeet Yadav, DAG, 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 in a dispute relating to payment of dues of the petitioner.

Petitioner has alleged that the petitioner was awarded the work assignment for construction of 17205 Mts capacity Phar with surrounding brick paving roads and 1 No. Injection well with drains in Hafed Complex at Rania District Sirsa. The work assignment was awarded on 29.12.2011 for a total

consideration of Rs.97,19,633/- with a time limit of two months.

The contract agreement has an arbitration clause No.25, which is reproduced here as under:-

“If any question, difference or objections on whatsoever shall arise in any way connected with or arising out of this instrument or the meaning or operation of any part thereof or the rights, duties or liabilities of either party or whether the contract should be terminated or has been rightly terminated or as regards the rights and obligation of the parties as a result of such termination, then save in so far as the decision of any such matter is hereinbefore provided for and has been so decided every such matter shall be referred for arbitration to the Arbitrator to be appointed by the RCS on a, written request from the Contractor/ Executive Engineer who will act as such at the time of reference within 30 days of the final payment has been made or from the date a registered notice for receiving the final payment is sent to the Contractor, and in case of minus bill then from the date of signing by the contractor such bill or from the date of notice to the contractor for his bill being minus, and his decisions shall be final and binding and where the matter involves a claim for or the payment or recovery or deduction of money, only the amount if any, awarded in such arbitration shall be recoverable in respect of the matter so referred.

If the matter is not referred to the arbitration within the period specified above, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely time barred.”

According to the petitioner, the work contract was of two months i.e. up to 28.02.2012 and, therefore, the petitioner mobilized its resources to start the work at the sight on receipt of letter of acceptance. However, the committee, constituted for observing the N.S. levels of the area to facilitate the petitioner to start the work in question, started its survey only after one month of the date of allotment of contract and therefore, the time period was extended upto 31.03.2012. Despite the delay on the part of the respondent-federation in providing un-interrupted and hindrance free site to the petitioner, the respondent-federation invoked clause-II of the contract and imposed penalty in an illegal manner. Petitioner had completed the work assignment as per the agreement on 31.05.2012, of full occupancy in order to enable the respondent-federation to start stacking of wheat stocks at the plinth. Respondent-federation has not paid the final bill of the petitioner, which is about Rs.30 lacs as on 31.05.2012. Petitioner has already approached the Registrar, Cooperative Societies, Haryana-respondent No.2 for appointment of the Arbitrator, vide memo No.55-56 dated 26.12.2017, invoking clause 25 of the contract agreement.

In view of the claim made by the petitioner, balance payment is to the tune of Rs.30 lacs, security deposit of Rs.4,85,982/-, compensation on account of prolongation of contract period to the tune of Rs.5 lacs and loss on account of

variation is also claimed to the tune of Rs.2 lacs, thereby, totaling Rs.41,85,982/- as on 26.12.2017. Petitioner has also claimed interest from the due date i.e. on the date of completion of project till final realization of the amount.

Notice of motion was issued on 14.12.20218. As per office report dated 04.04.2019, respondents have been served. Respondent No.2 is the competent authority under Clause 25 of the contract agreement to appoint the Arbitrator.

The Arbitrator has to be appointed within the prescribed period from the date of notice of final payment. According to the petitioner, final bill has not been answered in the present case, therefore, appointment of sole independent Arbitrator in terms of Section 11 (6) of the Act would suffice to meet the ends of justice. The dispute has arisen between the parties and there is an arbitration clause in the contract agreement. The petitioner has already invoked the arbitration clause.

After hearing learned counsel for the petitioner and learned counsel for respondent No.1, I deem it appropriate to appoint Sh. S.P.Singh, District and Sessions Judge (Retd.), H.No.151, Tribune Mitra Vihar, Sector 29, Panchkula (Haryana) to be the sole independent Arbitrator. The appointment of the Arbitrator, however, shall be subject to the declaration made by the Arbitrator under Section 12 of the Act with regard to his

independence and impartiality to settle the dispute between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act and his fee would be paid in accordance with Fourth Schedule of the Act, as amended from time to time and shall be shared equally by the petitioner and respondent No.2.

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

A copy of this order be sent to the Arbitrator at the following address:-

H.No.151, Tribune Mitra Vihar, Sector 29, Panchkula
(Haryana)

This petition is disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

26.08.2022

anita

whether speaking/non speaking

yes/no

whether reportable/non reportable

yes/no