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

ARB No.342 of 2018(O&M)
Date of Decision: 30.08.2022

M/s Build Well through its proprietor
Versus -Petitioner

Union of India and others
-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Abhinav Gupta, Advocate
for the Union of India/respondents No.1 and 2.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has preferred this writ petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Act No.3 of 2016 w.e.f. 23.10.2015 for appointment of an independent sole Arbitrator to adjudicate the dispute between the parties arising out of contract agreement having arbitration clause.

Petitioner was allotted the work of dismantling existing track and laying new track for sail sliding at SRX under ADEN/JRC vide letter dated 29.08.2005 with estimate cost of Rs.4,76,124/-. A formal agreement was executed on 05.11.2005. During currency of the contract agreement, dispute

arose between the parties for which arbitration clause was invoked by the petitioner. The sole Arbitrator was appointed and an award was passed by the sole Arbitrator on 03.07.2012.

Petitioner filed objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 and the objections were allowed. The award passed by the sole Arbitrator was set aside vide order dated 12.12.2017 and directions were issued to the Arbitrator to decide the case afresh after taking into consideration the entire claim of the petitioner. Both the parties were directed to appear before the Arbitrator on 26.02.2018.

On 12.02.2018, the petitioner moved a representation before the Arbitrator to fix the date and venue for arbitration in terms of order passed by the Additional District Judge, Amritsar.

Petitioner issued a legal notice dated 11.06.2018 upon failure of the Arbitrator to enter into arbitration proceedings despite expiry of six months from the date of order dated 12.12.2017.

The grievance of the petitioner was that the sole Arbitrator was not interested in the proceedings and the delay in entering into arbitration remained unexplained.

In view of amended provisions, the appointment of independent Arbitrator was pressed.

On 02.07.2018, the respondent-Department

appointed respondent No.3 as a sole Arbitrator in place of earlier Arbitrator without concurrence of the petitioner and by ignoring the legal notice and amended provisions of the Act.

Petitioner again served a legal notice dated 23.08.2018 in the context of not giving any consent for the appointment of respondent No.3. The appointment of official Arbitrator in view of amended provisions of the Act was claimed to be bad in law in terms of Schedule 5, 7 and Section 12(5) of the Act. Even appointment of respondent No.3 was contrary to the directions given by the Additional District Judge, Amritsar.

In view of aforesaid position, appointment of respondent No.3 has to be set aside and new independent sole Arbitrator has to be appointed in view of Section 12(5) of the Act and contract agreement having arbitration clause. Reference can be made to **TRF Ltd. Vs. Energo Engineering Projects Ltd., (2017) 8 SCC 377, Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd, (2020) 20 SCC 760, Ellora Paper Mills Ltd. Vs. State of Madhya Pradesh, (2022) 3 SCC 1** and **Bharat Broadband Network Ltd. Vs. United Telecoms Ltd., (2019) 5 SCC 755.**

According to the learned counsel for the petitioner, value of the claim is approximately to the tune of Rs.25 lacs.

Keeping in view the facts and circumstances of the

case, this petition is allowed and Sh. Tushar Sharma, Advocate, House No.182, Sector-6, MDC, Panchkula, (134114), Mobile No.9876994142 is appointed as the sole Arbitrator to resolve the dispute/difference between the parties. The appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time to be borne equally by the parties.

A copy of this order be dispatched to Sh. Tushar Sharma, Advocate, at the following address:-

House No.182, Sector-6, MDC, Panchkula, (134114), Mobile No.9876994142.

30.08.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No