

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

CWP-1135-2022 (O&M)
Date of decision:- 03.02.2022

M/s S. Kumar Construction Company

...Petitioner(s)

Versus

Bharat Sanchar Nigam Limited (BSNL) and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Rakesh Gupta, Advocate,
for the petitioner.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court)

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RAVI SHANKER JHA, C.J. (ORAL)

The petitioner by way of the present writ petition seeks a writ of certiorari for quashing the impugned order dated 16.06.2021 (Annexure P-48), whereby recovery of Rs. 61,04,061/- has been ordered against it.

The petitioner also seeks a writ of certiorari for quashing clauses 12 and 15 contained in Section V of the contract agreement vide which the decision of the General Manager, Telecom District has been made final being ultra-virus and void ab initio in view of Section 28 of the Indian Contract Act, 1872.

Heard learned counsel for the petitioner.

Concededly, the petitioner vide legal notice dated 12.04.2019 (Annexure P-39) has already invoked the arbitration proceedings which are pending before the authorities concerned. It is also observed that as regards grievance of the petitioner qua the impugned order dated 16.06.2021 (Annexure P-48), it has neither approached the concerned authorities, nor invoked the arbitration. Thus, as is being urged by the learned counsel for the petitioner that given the nature of the dispute, that is sought to be raised in this petition, the same is not arbitrable being beyond the arbitration clause contained in the agreement, lacks conviction. For, thus far, the authorities concerned have not opined or held so by passing any such order.

In the circumstances, in view of the fact that the matter is already pending before the authorities concerned and that the petitioner can always approach them bringing all the aspects to their notice, at this stage, learned counsel for the petitioner submits that it may be permitted to approach the arbitral authorities in respect of the issues involved in the present writ petition.

However, he submits that the petitioner may be granted liberty to avail other remedies available to it in case the authorities concerned arrive at a conclusion and pass an order to the effect that the disputes raised by the petitioner are not arbitrable.

Accepting the aforesaid submission made by learned counsel for the petitioner and in terms thereof, the writ petition stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
Amodh

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