

265+267**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****ARB-576-2021 (O&M)****Date of decision : July 26, 2022****M/s Narula Buildwell Private Limited****.....Applicant****Versus****Punjab Small Industries and Export Corporation Ltd. and others****....Respondents****CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. B.S. Jaswal, Advocate for the applicant.

Mr. Indresh Goyal, Advocate for the respondents.

LISA GILL, J.

Prayer in this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short – ‘the Arbitration Act’) is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out of Agreement letter No. PSIEC/EE-IV/3774 dated 20.01.2020 executed between the parties.

It is submitted that work of ‘Upgradation of Roads (with concrete Pavement) at IFP Batala’ was allotted to the applicant as per allotment letter dated 20.01.2020, being successful bidder in the tenders floated by the State Government for the work in question. It is submitted that work was started by the applicant, however, dispute arose between the parties. Respondents arbitrarily imposed penalty upon the applicant even though quality of work carried out by

the applicant was rated as 'very good' in the inspection carried out by the respondents.

Legal notice dated 04.08.2022 for release of dues was served upon the respondents. However, respondents, vide reply, Annexure A10 denied the applicant's claim. Accordingly, applicant, it is submitted invoked arbitration clause and sought appointment of independent Arbitrator in terms of clause 25 of the general conditions of Contract, which are applicable. Therefore, present application has been filed.

Reply has been filed on behalf of the respondents with an objection that in fact a formal agreement was never executed between the parties and applicant never signed the contract/agreement, which is the backbone of the work contract. However, it is not denied that the work in question was indeed allotted vide allotment letter dated 20.01.2020 to the applicant.

Existence of an arbitrable dispute between the parties is not denied, neither is the existence of the arbitration clause denied.

As per clause 25 of the General Conditions of Contract, which are admittedly applicable - Disputes Resolution Mechanism provides that in respect to original contract of the value upto Rs.5 crore, the dispute shall be referred to the sole arbitration of any serving/retired Superintending Engineer of PWD (N&R) out of the panel maintained by PSIEC after approval of the MD, PSIEC. However, in view of Section 12 (5) of the Arbitration Act and judgment of the Hon'ble Supreme Court in **TRF Limited versus Energo Engineering Projects Limited (2017) 8 SCC 377** and **Perkins Eastman Architects DPC and another vs. H.S.C.C. (India) Limited (2019) SCC online Supreme Court 1517,** unilateral appointment of the Arbitrator is not justified. There is indeed no impediment to the appointment of a sole independent Arbitrator in this case.

Learned counsel for the respondents is unable to point out any impediment for appointment of sole independent Arbitrator for resolution of dispute between the parties arising out of allotment of work vide allotment letter dated 20.01.2020.

Keeping in view the facts and circumstances as above, Mr. Justice S.D. Anand (Retd.), former Judge, Punjab and Haryana High Court is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. 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.

A copy of this order be dispatched to Mr. Justice S.D. Anand (Retd.), former Judge, Punjab and Haryana High Court, at the following address:-

A-9, Orbit Apartments 1, VIP Road, Zirakpur,
District (Mohali), Punjab.

Present application is, accordingly, disposed of.

July 26, 2022

rts

(LISA GILL)
JUDGE

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