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

ARB No. 63 of 2020 (O&M)
Date of Decision: 30.09.2022

M/s P.K. Verma and Company through its Proprietor

-Petitioner

Versus

Municipal Corporation, Amritsar and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Sanjeev Soni, Advocate, and
Mr. Sarthak Soni, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

1. Petitioner has preferred this petition under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in order to adjudicate the dispute between the parties.

2. A contract agreement was executed between the parties on 18.06.2016 in respect of work namely "P/L CC flooring (RMC) in village Mahal, Ward No.4". The allocation of work was given to the petitioner only after finding the petitioner to be the lowest tenderer.

3. There is an arbitration clause no.16 in the agreement

to the effect that in case of any dispute between the parties, the Commissioner of Municipal Corporation, Amritsar shall be the sole arbitrator to decide the dispute and his decision shall be final.

4. After the amendment Act of 2015 and in view of **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**; **Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755**; **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1**, the official arbitrator cannot be appointed.

5. In view of written statement filed by the respondents, time period for execution of work was six months. The work was started on 18.05.2016 and the tentative date of completion of the work was 17.11.2016. The work was not completed within the stipulated period, rather the same was completed only on 20.04.2017.

6. During execution of work, payments were made to the petitioner. Payment of 3rd and final bill was made on 04.11.2019 to the tune of Rs.6,59,946/- and thereafter, petitioner also applied for refund of security amount of Rs.11,69,720/- and the same was duly refunded to the petitioner

on 19.12.2020.

7. According to learned counsel for the respondents, nothing survives towards alleged pending dues of the petitioner. The aforesaid stand of the respondents has been refuted by the petitioner on the ground that the petitioner had to issue a legal notice under Section 396 of Punjab Municipal Corporation Act on 11.02.2019 for re-conciliation of the payments owing to inaction on behalf of the respondents.

8. Petitioner ultimately filed CWP No.11326 of 2019 which was disposed of by the High Court on 01.05.2019 thereby directing the respondents to examine the claim of the petitioner against the backdrop of legal notice dated 11.02.2019 within a prescribed period. The said order was passed without making any opinion on the merits of the case.

9. Learned counsel for the petitioner submits that after the order dated 01.05.2019, the respondents have released payment of Rs.6,59,946/- on 04.11.2019 by claiming that the same was towards 3rd and final running bill of the petitioner. The security amount of Rs.11,69,720/- was also released to the petitioner. Petitioner felt himself to be aggrieved against the action of the respondents in not making full payments and thereafter, he invoked the arbitration clause by issuing a legal notice dated 30.01.2020.

10. According to the petitioner, the dispute still exists for which he has already invoked the arbitration clause. Assertion and denial by the parties in my considered opinion can be referred to the jurisdiction of an arbitrator particularly when existence of contract agreement having arbitration clause is not in dispute. The Arbitrator would appreciate all the pleas to be raised by the parties during arbitral proceedings.

11. The tentative claim of the petitioner is Rs.25 lacs to Rs.30 lacs, subject to final adjudication by the Arbitrator on merits.

12. In view of facts and circumstances of the case, I deem it appropriate to appoint Sh. Sanjeev Kumar Garg, District and Sessions Judge (Retd.), H.No.518/AS/PCS Society, Mullanpur, New Chandigarh, 7626900060 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.

13. The Arbitrator shall complete the proceedings within the specified time in terms of Section 29-A of the said 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 the petitioner and respondent(s) in equal proportion.

14. The venue will be as per the convenience of the Arbitrator.

15. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Sanjeev Kumar Garg, District & Sessions Judge
(Retd.),
H.No.518/AS/PCS Society, Mullanpur
New Chandigarh
7626900060

16. Petition stands disposed of accordingly.

30.09.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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