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

**ARB No.87 of 2019(O&M)
Date of Decision: 21.10.2022**

M/s Inter Solar System Pvt. Ltd.

.....Petitioner

Vs

Chandigarh Housing Board Through its Chairman

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jagtar Kureel, Advocate
for the petitioner.

Mr. Praveen Chauhan, Advocate for
Mr. G.S. Wasu, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent arbitrator to adjudicate the dispute arising out of the contract agreement having arbitration clause 25.

[2]. The agreement was executed on 24.04.2015. Respondent vide letter dated 15.03.2016, had levied penalty @ 1.5% per month for delay in completion of work to be

computed w.e.f. 01.08.2015 on per day basis till actual completion of the work. The petitioner was allocated the work for supplying, installing and commissioning of Solar Water Heating System for the work construction of 260 two bedroom flats in Sector 63, Chandigarh. The work had commenced w.e.f. 01.05.2015 and was to be completed within a period of three months from the date of commencement i.e. till 30.07.2015.

[3]. Owing to violation of terms and conditions, penalty was imposed by the respondent vide order dated 15.03.2016 @ 1.5 % for delay to be computed w.e.f. 01.08.2015 on per day basis till completion of work i.e. 31.01.2016 on the tendered amount of work shown in the agreement.

[4]. Petitioner challenged the aforesaid order dated 15.03.2016 in an appeal dated 26.05.2016 before the Chief Engineer, Chandigarh Housing Board, Chandigarh.

[5]. Para No.14 of the petition reads as under:-

“14. That the petitioner challenged the impugned order dated 15.03.2016 by filing appeal No.1890 dated 26.05.2016, before the Chief Engineer, Chandigarh Housing Board, Chandigarh taking various pleas and grounds therein, with prayer that the appeal may be accepted and extension so granted by the authority in time limit upto 31.01.2016 may be treated as regular extension granted in the case and prayed for setting

aside the penalty. Petitioner further prayed in the appeal that if the appeal is not allowed that Arbitrator may be appointed to decide the dispute, but Chief Engineer, Chandigarh Housing Board, Chandigarh had neither decided the above said appeal on merits, nor had appointed Arbitrator till date under the Arbitration and Conciliation Act. Till date petitioner is waiting for appointment of arbitrator as per the terms settled in Agreement/contract (P-2) between the parties. Copy of appeal filed by petitioner against the impugned order of penalty is annexed herewith as Annexure P-7.”

[6]. In reply to the aforesaid para, corresponding para No.14 of the written statement reads as under:-

“14. That the contents of para No.14 of the petition are wrong and denied. Rather M/s Inter Solar System Pvt. Ltd. had submitted an appeal letter dated 20.05.2016 which was received in CE office on 26.05.2016 under Clause-25(i) of the Contract Agreement against the above said order of the SE, CHB. Clause-25(i) of the General Conditions of the Contract (GCC) states that contractor may within 15 days of the receipt of Superintending Engineer decision, appeal to the Chief Engineer against the order of the Superintending Engineer. In their case, the contractor had appealed to the Chief Engineer after a lapse of two months. Even then, an opportunity was given by the Chief Engine for personal hearing on 12.01.2017. The decision of SE, CHB was reconsidered in view of 10% additional quantum of work executed by the firm against the work

as per agreement. In view of the same extension in time limit of 9 days beyond the stipulated time period of 3 months i.e. 31.07.2015 was granted to the agency without levy of compensation. Hence the claims of the agency is denied.”

[7]. The grievance of the petitioner is that the order if any, passed by the Chief Engineer on the appeal of the petitioner was never communicated to the petitioner and thereafter, the petitioner filed an application before the Chairman, Chandigarh Housing Board, Chandigarh on 05.10.2018, thereby mentioning that Chief Engineer, Housing Board, Chandigarh had neither decided the appeal filed by the petitioner on merits, nor had yet appointed any Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. The prayer was made for appointment of Arbitrator under the Act for redressal of grievance of the petitioner.

[8]. The aforesaid letter dated 05.10.2018 was decided by the Executive Engineer, Chandigarh Housing Board, Chandigarh on 04.12.2018, thereby rejecting the application on the ground that a personal hearing was given by the Chief Engineer on 12.01.2017 and a substantial relief was granted to the petitioner on levy of compensation and now after a gap of 22 months, the appeal for appointment of Arbitrator against the order passed by the Chief Engineer cannot be considered.

[9]. Perusal of the letter dated 05.10.2018 would show that a specific reference was made in respect of non-adjudication of the appeal by the Chief Engineer in terms of para No.14 of the petitioner.

[10]. Perusal of order dated 04.12.2018 would show that the copy of order passed by the Chief Engineer, rejecting the claim of the petitioner was never sent to the petitioner. Reply in terms of para No.14 of the respondent is conspicuously silent as regards the supply of copy of order, if any, passed by the Chief Engineer.

[11]. The assertion and denial made by the parties, in my considered opinion, give rise to some arbitral dispute, which can only be adjudicated by the Arbitrator in terms of invocation of arbitration clause and existence of valid agreement between the parties. The petitioner has tentatively valued its claim to the tune of Rs.27,66,547/-.

[12]. In view of existence of dispute between the parties, I hereby appoint Sh. Jagdish Singh Khushdil, District and Sessions Judge (Retd.), House No.5412 HIG (Ind), Sector-38, West Chandigarh, Mobile No.8558803871 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 would complete the proceedings within the specified time in terms of Section 29-A of the 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 both the parties equally.

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

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

Sh. Jagdish Singh Khushdil, District and Sessions
Judge (Retd.).
House No.5412 HIG (Ind), Sector-38 West,
Chandigarh,
Mobile No.8558803871

[16]. Petition stands disposed of accordingly.

21.10.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

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