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

**ARB No.299 of 2021(O&M)
Date of Decision: 27.10.2022**

M/s JBS Electricals Co.

.....Petitioner

Vs

**Haryana Shehri Vikas Pradhikaran and others
.....Respondents**

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

Present:Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Priyavrat Parashar, Advocate
for the respondents.

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 between the parties arising out of the contract agreement i.e. work of up-gradation of existing electrification and illumination system in Sector 27 and 28 at Hisar and all other works contingent thereto.

[2]. Petitioner was allotted a tender for up-gradation of

electrification and illumination system in Sector-27 and 28 at Hisar and all other works contingent thereto with approximate cost of Rs.163.80 lacs on 06.03.2019.

[3]. The time limit of four months was provided to the petitioner. A written agreement was executed between the parties with terms and conditions. According to the petitioner, the petitioner started the work assignment with due diligence, but the respondent No.3 and his staff created hindrance in smooth execution of work. The matter was reported to the Engineer incharge. Petitioner has requested to the respondents on various occasions to remove the obstacles and ultimately, the petitioner had to file an application for settlement of disputes as per Clause 25 (A)(i) of the agreement on 02.11.2020.

[4]. Owing to the inaction on behalf of the respondents, the petitioner again filed representation on 26.11.2020 and reminder dated 29.12.2020. Petitioner ultimately invoked the arbitration clause vide representation dated 27.01.2021.

[5]. Notice of motion was issued on 27.04.2021. Reply filed by the respondents indicates that the petitioner submitted the application for extension in time limit upto 31.03.2021 and the same was recommended to the higher authority for approval, but the case of extension of time was returned back to the Superintending Engineer, HSVP, Elect. Circle, Gurugram by the

Chief Engineer-II to HSVP, Panchkula on 23.02.2021 with the remarks that only 80% work was done at the site, which was not satisfactory and therefore, 100% work be got completed. Along with the reply, an affidavit of the petitioner dated 14.10.2021 was attached in the context that the petitioner had already filed a case in the High Court and he would withdraw the same on 18.11.2021 i.e. the date fixed therein.

[6]. During course of arguments on 10.10.2022, learned counsel for the respondents submitted that after receipt of payment of Rs.1,08,21,783/-, the petitioner had executed the aforesaid affidavit dated 14.10.2021 in the context of withdrawing the present petition on the date fixed i.e. 18.10.2021. Following order was passed on 10.10.2022:-

“Learned counsel for the respondents submits that proprietor of the petitioner-firm Sh. Rajinder Singh after receipt of payment of Rs.1,08,21,783/- has already executed an affidavit on 14.10.2021 that he would withdraw the present case. The amount has already been deposited in the account of the petitioner by means of RTGS.

Learned counsel for the petitioner has not filed any replication so far in the context of denying the aforesaid fact.

Learned counsel for the petitioner seeks a week's adjournment in order to verify whether the amount has been received in the account of the

petitioner or not.

Adjourned to 27.10.2022.”

[7]. Today, an additional affidavit has been filed by the petitioner, wherein it has been submitted that the petitioner had submitted its bill amounting to Rs.1,86,22,980.80 before the respondents. The respondents made payment of Rs.53,36,579/- during execution of work and thereafter, the petitioner submitted its final bill amounting to Rs.1,32,86,401/- before the respondents and the respondents accordingly made payment of Rs.76,06,606/- to the petitioner firm on 27.09.2022 and an amount of Rs.56,79,795/- is still due to be paid to the petitioner by the respondents. Para Nos.2 and 3 of the additional affidavit are reproduced hereasunder:-

“2. That the deponent firm has submitted its bill amounting to Rs.1,86,22,980.80 before the respondents and the respondents have already paid Rs.53,36,579/- during the execution of the work and the deponent firm has submitted its final bill amount of Rs.1,32,86,401/- before the respondents and the respondents have paid an amount of Rs.76,06,606/- to the deponent firm on 27.09.2022 and the remaining outstanding amount towards the respondent of the deponent firm is Rs.56,79,795/- as on today.

3. That it is pertinent to mention here that the respondents have assured the deponent that they will clear all the outstanding amount of the deponent and

the deponent have to withdraw the present case from this Hon'ble Court and in this regard they have also asked the deponent to file an affidavit in this regard for withdrawal of the present case and on the assurance made by the respondents that they will clear all the outstanding due amount of the deponent firm, the deponent has given an affidavit on dated 14.10.2021, but the respondents have failed to clear the outstanding due amount towards the deponent and misusing the affidavit given by the deponent dated 14.10.2021 by pleading the same in their written statement.”

[8]. Perusal of the stand taken by the petitioner would show that payment of Rs.76,06,606/- has been made by the respondents even after execution of affidavit dated 14.10.2021. The aforesaid affidavit is silent with regard to exact amount paid to the petitioner on earlier occasion.

[9]. Learned counsel for the respondents with reference to Annexure P-3 submits that as per calculations projected by the petitioner, an amount of Rs.1,05,44,694/- was due as on 02.11.2020 and the petitioner sought to enhance the claim by means of filing additional affidavit. All these pleas would be considered by the Arbitrator in accordance with law.

[10]. In view of assertion and denial made by the parties, I find that an arbitral dispute exists between the parties, which

can only be adjudicated by the Arbitrator in terms of arbitration clause in the agreement. The petitioner has tentatively valued its claim to the tune of Rs.56,79,795/-.

[11]. Both the parties would be at liberty to raise their pleas before the Arbitrator in accordance with law.

[12]. For the reasons recorded hereinabove, I hereby appoint Mr. M.S. Virdi, District and Sessions Judge (Retd.), House No.1061, Sector-4, Panchkula, Mobile No.9814370288 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:-

Mr. M.S. Virdi, District and Sessions Judge (Retd.),
House No.1061, Sector-4, Panchkula,
Mobile No.9814370288

[16]. Petition stands disposed of accordingly.

27.10.2022
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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No