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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.19397-CII of 2019 in/and
ARB No.6882 of 2018 (O&M)
Date of Decision: 16.11.2022

M/S VISHESH KUMAR CONTRACTORPetitioner
Vs
STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harinder Singh, Advocate for the petitioner.

Mr. R.S. Pandher, Sr. D.A.G., Punjab.

Mr. Parambir Singh, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.(Oral)

CM-19397-CII-2019

For the reasons mentioned in the application, the same is allowed. Accompanying reply on behalf of respondents No.2 to 4 is taken on record, subject to all just exceptions.

ARB No.6882 of 2018 (O&M)

[1]. The Petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute/differences arising out of the work assignment i.e. construction of two lane bridge over Abohar Branch Canal at RD 12200 connecting village Tugal Block Sudhar District Ludhiana.

[2]. The work was allotted to the petitioner by the respondent-Board vide memo dated 19.12.2016. Period of three months was fixed for doing the assignment from the date of issue of the allotment letter. The bridge was based on open foundation and the assignment was allotted on item-rate basis for its completion within three months. For undertaking the work assignment, a flow of canal water was required to be stopped as the same was flowing beneath the proposed bridge. The petitioner took up the assignment in its right earnest and arranged necessary material and manpower to execute the work by incurring huge expenses. Despite repeated requests, the respondent No.4 did not close/stop the flow of water which was necessary for constructing the bridge based on open foundation.

[3]. Even the petitioner submitted a proposal on 26.04.2017 with a GAD for a 7 meter wide bridge costing Rs.2.70 lakhs for construction of the bridge in running water. Such design was not accepted and the petitioner was asked to submit design within the confines of approved amount. That is how the said proposal could not be materialized. The petitioner was required to furnish performance security @ 5% of the contract price within 21 days of starting of work assignment. The work remained non-starter as the administrative department did not stop the flow of water

underneath the bridge resulting in non-performance of the construction work. Admittedly, the work assignment was not cancelled on account of non-deposit of performance security @ 5% of the contract price. Para no.3 of the reply shows that due to non-receipt of Bandi from the concerned department, the work could not be started and design had to be changed in view of the larger interest of the common man. Even the petitioner was asked to remove the material lying at the spot.

[4]. From the pleadings of the parties, it is apparent that there exists a dispute between the parties which has to be resolved in view of arbitration clause in the agreement. Petitioner has tentatively fixed the value of its claim to the tune of Rs.59,70,768/- and has also invoked the arbitration clause No.25 of the contract agreement. It is settled principle of law that even in case of slightest doubt, the matter has to be referred for arbitration. All the pleas would be considered by the Arbitrator on the basis of material to be led by the parties before the Arbitrator. The respondents would also be at liberty to raise all the pleas in defence before the Arbitrator. The claim of the petitioner is not *ex facie* time barred.

[5]. In view of existence of agreement between the parties having arbitration clause, I hereby appoint Mr. Gurcharan Singh Saran, Distt. & Sessions Judge (Retd.) # 74 Punjab Judges and

Officers Enclave, Sector 77 Mohali, Mob. No.9463594949 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.

[6]. The Arbitrator would 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 both the parties equally.

[7]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

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

Mr. Gurcharan Singh Saran, Distt. & Sessions Judge (Retd.)
74 Punjab Judges and Officers Enclave,
Sector 77 Mohali, Mob. No.9463594949

[9]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

November 16, 2022

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No