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

ARB-16-2022

Date of decision: 25th May, 2023

M/s Brightway Contractors and Developers

...Petitioner

Versus

Punjab Heritage and Tourism Promotion Board

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Vilas Sharma, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.
2. The petitioner was a successful bidder in the tender invited for construction of Tourist Facilitation Centre with Cafeteria and parking at Anandpur Sahib.
3. Clause 25 provides for pre-arbitration mechanism and dispute resolution through arbitration. The work allotted was a non-starter. The petitioner vide representation dated 6th September, 2021 addressed to Chief Executive Officer, Punjab Heritage and Tourism Promotion Board and Chief General Manager (P) availed the remedy of pre-arbitration settlement but no fruit was yielded to the efforts. A notice under Section 21

of the Act dated 22nd November, 2021 was issued for appointment of an arbitrator. Needful was not done, hence, the present petition.

4. Learned counsel for the petitioner submits that officials of respondent were approached by representation dated 6th September, 2021 for resolving the dispute. It is further argued that as the work had not started there was no Engineer of the work.

5. Learned counsel for the respondent raises an objection that pre-arbitration mechanism was not availed.

6. From the reading of clause 25(ii) of general terms and conditions, the Engineer of the work at first instance has to be approached for re-conciliation of the matter. He is obligated to decide the matter within sixty days on receipt of the request. On failure of doing the needful or reconciliation of the dispute, the arbitrator is to be appointed.

7. On a pointed query from the Court that as to whether there is an Engineer of the work in the case in hand, learned counsel for the respondent on instructions submits that there is none.

8. The contention of learned counsel for the respondent that petitioner failed to avail pre-arbitration mechanism lacks merit.

9. There is no dispute raised with regard to the arbitration clause. The petition is accordingly disposed of by appointing Mr. P.L. Ahuja, District and Sessions Judge (Retd.), H.No. 705, Swastik Vihar, Patiala Road, Zirakpur as the sole arbitrator.

10. The arbitrator is appointed subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties. The arbitrator would be free to decide the venue with the consent of the parties. The arbitrator

amended. The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

11. It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement.

12. Copy of the order be sent to the appointed arbitrator.

13. Since the main case has been decided, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

25th May, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |