

Arbitration Case No. 531 of 2021

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 531 of 2021
Date of decision: 9th January, 2023

Lokenath Construction Private Limited

Petitioner

Versus

Aravali Power Company Pvt. Ltd.

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Anannya Ghosh and Mr. Dushyant Manocha, Advocates
for the petitioner.
Mr. Vikas P. Singh, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

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.

The petitioner was awarded a tender for liasoning with coal companies and Railways for Central Coalfields Ltd. area. The tender was awarded on 16.3.2017. As per general conditions of contract, mechanism for resolving the disputes through arbitration is provided. Clause 56 thereof is reproduced below:

“*ARBITRATION AND LAWS*”

Arbitration:

56.Except otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality to workmanship or materials used on the work or as to any other

question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the executions or failure to execute the same whether arising during the progress of works or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager of Aravali Power Company Private Limited and if the General Manager is unable or unwilling to act, to the sole arbitration of some other person appointed by the Chairman, Aravali Power Company Private Limited, willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of Aravali Power Company Private Limited and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason as aforesaid at the time of such transfer, vacation of office or inability to act, Chairman, Aravali Power Company Private Limited shall appoint another person to act as arbitrator in accordance with the terms or the Contract. It is also a term of this contract that no person other than a person appointed by Chairman, APCPL as aforesaid should act as arbitrator and if for any reason, than is not possible, the matter is not to be referred to arbitration at all.

Subject as aforesaid the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made thereunder and

for the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute. The arbitrator(s) may from time to time with consent of the parties enlarge the time, for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the Contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing. The arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding on all parties to this contract.

The cost of arbitration shall be borne by the parties to the dispute, as may be decided by the arbitrator(s).

In the event of disputes of difference arising between one public sector enterprise and a Govt. Department or between two public sector enterprises the above stipulations shall not apply, the provisions of B. P.E. Office memorandum No. BPE/GL-001-76/MAN/2(110-75/BPE (GMI-1) dated 1st January 1976 or its amendments for arbitration shall be applicable.”

There is a dispute between the parties with regard to the dues.

Notice dated 16.6.2021 was issued for appointment of Arbitrator. Reply

dated 21.7.2021 was given proposing three names as arbitrator.

After arguing for some time, in view of amendment in Section 12(5) of the Act, learned counsel for the respondent is not in a position to raise any substantial objection for appointing an independent arbitrator.

The petition is accordingly disposed of by appointing Mr. Justice Rajiv Sharma, a former Judge of this court, resident of H. No. 505 (Backside First Floor) Sector 36-B, Chandigarh as the sole arbitrator 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 shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

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

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

9th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |