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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-68-2021

Date of decision:-06.09.2024

P.S. Associates

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. Manu Aggarwal, Advocate (THROUGH V.C.) with
Mr.R. Kartikeya, Advocate,
Ms.R. Akanksha, Advocate, and
Ms.Ishita Pandey, Advocate
for the petitioner.

Mr.Sharad Aggarwal, DAG, Haryana.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an independent Arbitrator to adjudicate the disputes between the parties.

2. On 19.01.2024, this Court passed the following order:

"These are the applications under Section 11 of the Arbitration and Conciliation Act, 1996 (in short the Act) for the



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appointment of an arbitrator.

In the reply filed by the respondent – State of Haryana on behalf of the Executive Engineer, Panchayati Raj, HBH Project, Sonapat, they have referred to clause 33 of the agreement dated 11.12.2013 (Annexure P-2) and stated that the applicant is bound by the said clause according to which the Executive Engineer has to decide the matter within sixty days with respect to the claim of the applicant. They have also placed on record the affidavits dated 05.04.2018 (Annexure R-3), 23.10.2018 (Annexure R-4) and 31.10.2018 (Annexure R-5) as well as the letter dated 31.10.2018 (Annexure R-6), whereby the total amounts of ₹ 35,91,972/- & ₹ 82,24,060/- respectively have been deposited in the account of the applicant. It is further stated that the applicant has delayed the completion of work and this fact has been mentioned in the letters dated 29.04.2015 (Annexure R-8). The applicant has also been granted extension thrice vide letters dated 24.07.2014 (Annexure R-9) to get the work completed. Further, the respondent has placed on record the letters dated 18.08.2014 (Annexure R-10) to show that the applicant had admitted the use of an inferior quality of material i.e. bricks and removed the flush door shutters vide letters dated 25.05.2016 (Annexure R-11). However, the respondent is not disputing that there is Section 11(6) of the Act for referring the matter to an arbitrator.

Another ground taken is that the applicant is bound



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to pre-deposit before the matter is referred to an arbitrator.

On this issue, reference can be made to a recent judgement of the Supreme Court in Lombardi Engineering Limited Vs Uttarakhand Jal Vidyut Nigam Limited 2023 SCC Online SC 1422, wherein in paragraph 102 it has been held that this issue can also be decided by the arbitrator.

In the present case, the parties are not in dispute with respect to the agreement (Annexure P-2) which has specific clause 33 with respect to appointment of the sole arbitrator. As per sub clause (2) thereof, the parties have agreed to refer the dispute to the sole arbitrator to be nominated by the CA, Housing Board from amongst the officers who will be either a serving Superintending Engineer or Chief Engineer of the Housing Board, Panchayati Raj, Haryana or Haryana PWD B&R Branch.

In the circumstances, Sh. Jai Bhagwan Verma, former Engineer-in-Chief, Public Health Engineering Department, Haryana now residing at H. No. 352, Sector 2, Panchkula - 134112 is appointed as the sole arbitrator to adjudicate upon the disputes and differences between the parties.

Let necessary declaration under Section 12(5) of the Act be obtained from Sh. Jai Bhagwan Verma, former Engineer-in-Chief, Public Health Engineering Department, Haryana and placed on record.

List on 16.02.2024.

A photocopy of the order be placed in the connected



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file.”

3. As per office report, the declaration has not been received from the appointed Arbitrator and dasti notices collected by the counsel for the petitioner have not been received back.

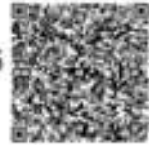
4. Counsel for the petitioner has placed on record a xerox copy of the dasti notice issued to the appointed Arbitrator, which shows that the Arbitrator has gone to Canada.

5. On the asking of the Court, counsel for the petitioner in presence of the State counsel has called up the appointed arbitrator on his mobile, but he could not connect. It seems that the learned Arbitrator is not available. Anyhow, he has not sent the declaration as contemplated under the statute.

6. At this stage, counsel for the parties have requested that a substitute Arbitrator be appointed. Their request is accepted.

7. Petition is allowed. Sh. Manmohan Singh, Chief Engineer cum Engineer-in-Chief (Retd.) - Former Member Punjab Infrastructure Regulatory Authority (PIRA), r/o # 74, Ward No.07, Gurdwara Road, Kharar, Distt. Mohali Punjab -140301, M: 9876700454, is appointed as the substitute Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute between the parties.

8. Parties are directed to appear before the Arbitrator on 14.10.2024 at 11:00 A.M. at the address mentioned above or at any other place to be fixed by the Arbitrator.



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9. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

10. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitration proceedings, and any observation made hereinabove will not be binding on the Arbitrator.

11. Copy of the order be sent to the appointed Arbitrator.

(SUVIR SEHGAL)
JUDGE

06.09.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No