*ARB-41-2024 (O&M)**-1-*

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

236-3**ARB-41-2024 (O&M)**
Date of Decision: 22.10.2024**M/s Brahmaputra Infrastructure Ltd.**

... Petitioner

Vs

**Chief Engineer, (National Highway),
Public Works Department and others**

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

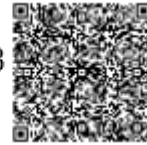
Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

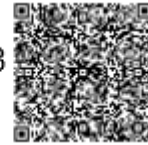
1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitral Tribunal to adjudicate the dispute between the parties.

2. Counsel for the petitioner submits that an agreement, dated 29.10.2016, Annexure P-1, for construction of a Railway Over Bridge on National Highway-15 (New NH-54) near Kotakapura, was entered into between the parties pursuant to the acceptance of the bid given by the petitioner. Mr. Mahajan, submits that there was a hold up



in handing over of the encumbrance free site as well as delay in making payments. He submits that petitioner was granted extensions and completed the work on 31.12.2020. He submits that as a dispute arose between the parties and by virtue of letter dated 13.07.2023, Annexure P-3, petitioner raised claims, which were not referred to the Conciliator within the stipulated period of 30 days, as provided in Clause 26.2 of the Contract Agreement and the petitioner issued notice dated 16.09.2023, Annexure P-4, invoking the arbitration clause 26.3 by nominating an Arbitrator. He submits that at that stage vide communication dated 08.08.2023, Annexure P-5, the dispute was referred to a Conciliator and petitioner did not participate in the proceedings. He submits that on 06.11.2023, Annexure P-6, petitioner insisted upon reference of differences to an Arbitrator.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that by communication dated 08.08.2023, Annexure R-3, respondents had appointed a Conciliator, but the petitioner deliberately did not participate in the proceedings. State counsel submits that there was delay in the completion of the project and the time period for its completion was extended on the request of the petitioner. It is the stand of the respondents that the petitioner is responsible for the delay. By making a reference to the affidavit, Annexure R-6, submitted by the petitioner, State counsel submits that the petitioner has waived the right to claim any financial benefit due to the delay in the handing over of the encumbrance free land.

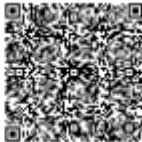


4. At this stage, counsel for the petitioner submits that the affidavit, Annexure R-6, was not voluntary as the petitioner had made a huge investment in man and machinery to execute the allotted work. It is his specific case that the letter, Annexure R-3, was received by the petitioner on 10.10.2023, which was beyond the stipulated period as mentioned in the arbitration clause.

5. I have heard counsel for the parties and considered their respective submissions.

6. From the respective stand taken by the parties, it is evident that an agreement was entered into between the parties, which contains an arbitration clause. The chain of correspondence on the record shows that a dispute exists between the parties and the petitioner has exhausted the pre-reference mechanism as provided in the arbitration clause. In **Duro Felguera, S.A. versus Gangavaram Port Limited (2017) 9 SCC 729**, Hon'ble Supreme Court has held that Court's intervention at the stage of appointing an arbitrator is very limited and this intention as incorporated in Section 11(6-A) of the Arbitration Act, ought to be respected. As to whether the affidavit, Annexure R-6, executed by the petitioner is under financial duress or voluntary has to be determined by the arbitrator and this Court refrains itself from examining or commenting upon it. This Court, therefore, does not have any hesitation in acceding to the prayer made in the petition.

7. As the respondents have failed to appoint an Arbitrator till the institution of the petition under Section 11(6) of the Arbitration



Act, the jurisdiction to appoint an Arbitrator vests with this Court. In order to save time and expense, this Court is of the view that the appointment of a sole Arbitrator would comply with the mandate of the statute.

8. Accordingly, petition is allowed. Mr. Justice (Retd.) Ram Chand Gupta, former Judge of Punjab and Haryana High Court, # 215CP, Sector 4, M.D.C., Panchkula, Mobile No.097800-08147, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience. Liberty is granted to the parties to make a request before the Arbitrator for holding the proceedings at Patiala.

10. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

11. A request letter along with a copy of this order be sent to Mr. Justice (Retd.) Ram Chand Gupta.

22.10.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No