

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-232-2021
Date of decision:-02.04.2024

M/s Superior Aircon Private Ltd.

...Petitioner

Versus

Executive Engineer, Project Public Health Division No.8, Additional
Deluxe Building, Sector 9-D, Chandigarh

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Munish Kumar Garg, Advocate and
Mr.Tanuj Goyal, Advocate
for the petitioner.

Mr.Baljinder Singh, Advocate and
Mr.Shobit Phutela, Advocate
for the respondent.

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 Arbitrator to adjudicate the dispute between the parties.

2. Counsel for the petitioner submits that the tender of the petitioner for the work of Restoration, Preservation, Conservation and Management of Capitol Complex (Word Heritage) Chandigarh for Providing, Installing, Testing etc. of Central Air Conditioning System (HVAC) at Punjab and Haryana Assembly Building, Sector-1, U.T. Chandigarh, was accepted by the respondent by letter dated 07.03.2019,

Annexure P3 and an allotment letter, Annexure P5, was issued the very next day. He submits that Clause 25 of General Conditions of Contract (GCC) contains a provision for resolution of dispute through the medium of arbitration. He submits that the petitioner duly furnished the bank guarantee and sought “AUTOCAD” drawing for starting the work, which was never supplied and by letter dated 20.05.2019, Annexure P10, petitioner issued a notice under Clause 3A of GCC, 2013 for foreclosure of the contract. He submits that instead of responding to petitioner’s communication, respondent by letter dated 17.09.2019, Annexure P15 forfeited the performance guarantee and rescinded the agreement. Counsel submits that in terms of Clause 25A, petitioner submitted claim to the Superintending Engineer by letter dated 23.09.2019, Annexure P16, who declined them by his communication dated 15.10.2019, Annexure P19. Counsel submits that thereafter the petitioner approached the Chief Engineer vide letter dated 22.10.2019 and 07.11.2019, Annexures P20 and P22, respectively, who did not attend to the communication and on the request made by the petitioner, matter was referred to the Dispute Redressal Committee (DRC). He submits that pursuant to notice dated 04.02.2020, Annexure P25, petitioner appeared before the DRC on 12.02.2020 but no order was passed and after the expiry of stipulated period of 90 days, petitioner invoked the arbitration by submitting notice dated 03.06.2020, Annexure P26, which was followed by notice dated 23.07.2020, Annexure P27.

3. Upon notice, petition has been contested by the respondent by filing response wherein it has been *inter alia* submitted that the pre-reference procedure as contemplated under the arbitration clause has not

been adhered to. It has been further submitted that despite repeated requests, the petitioner never started with the awarded work, resulting in its termination as well as forfeiture of the performance agreement.

4. Counsel for the respondent has made a reference to communication dated 16.12.2019, Annexure P24 to submit that the Superintending Engineer gave a decision in response to communication addressed by the petitioner but the petitioner never challenged it.

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

6. It cannot be disputed that an agreement was entered into between the parties, which contains an arbitration clause. A dispute has undoubtedly arisen between the parties. The only issue to be determined is whether the petitioner has exhausted the pre reference mechanism as provided under the Clause 25A. Reference to the various communications made by the petitioner shows that he has availed of the remedy. Insofar as the communication, Annexure P24 is concerned, its perusal shows that it has been sent in response to the letter dated 07.11.2019, Annexure P22, addressed to the Chief Engineer. Clause 25A provides that the Chief Engineer is to take a decision on the appeal submitted by the petitioner within a period of 30 days. Communication, Annexure P24 has been sent after 30 days and that too by the Superintending Engineer. Therefore, the same cannot be taken into consideration. This Court is, therefore, of the view that the dispute deserves to be resolved by referring it to an Arbitrator and the prayer made in the petition deserves to be acceded to.

7. Accordingly, petition is allowed.

8. At this stage, on a consensus arrived at between the counsel for the parties, Sh. R.N. Singal, District & Sessions Judge (Retd.), r/o #1182, Sector 15-B, Chandigarh-160015, M: 9316010629, is appointed as the sole 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.

9. Parties are directed to appear before the Arbitrator on 02.05.2024 at 11:00 A.M. at the address mentioned above or at any other place to be fixed by the Arbitrator.

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

11. Needless to mention, respondents will be at liberty to raise all the pleas before the Arbitrator.

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

(SUVIR SEHGAL)
JUDGE

02.04.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No