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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

214

ARB-120-2023 (O&M).
Date of Decision: 30.08.2024.

OSCAR SECURITY AND FIRE SERVICE

... Petitioner(s)

Versus

M.D. CHANDIGARH, INDUSTRIAL AND TOURISM
DEVELOPMENT CORPORATION LIMITED

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amandeep Singh Talwar, Advocate,
for the petitioner.

Ms. Madhu Dayal, Advocate,
for the respondent.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer in the present petition filed under Section 11 (6) of
the Arbitration and Conciliation Act, 1996 is for seeking appointment of an
arbitrator.

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2 Learned counsel appearing for the petitioner contends that in response to the E-Tender dated 08.08.2018 inviting bids for providing the services of manpower by the respondent, the petitioner participated in the same and the contract for outsourcing of services was allotted to the petitioner vide work order dated 30.10.2018 (Annexure P-2). He submits that the contract was valid from 01.11.2018 to 30.09.2021 and petitioner provided the services to the respondent, however, the respondent department breached various terms and conditions of the agreement and also failed to release the undisputed dues. He contends that the petitioner also wrote various letters, during the subsistence of the contract to the respondent department regarding timely payment, however, the respondent corporation issued an illegal termination order dated 21.11.2019 which was challenged by the petitioner before the Additional District Judge, Chandigarh by filing a petition under Section 9 of the Arbitration & Conciliation Act, 1996, wherein the respondent withdrew the termination order and converted the same into Show Cause Notice. He contends that on 03.12.2022, the petitioner sent a letter to the respondent requesting release of the outstanding amount and also for appointment of an independent Arbitrator. It is submitted that no reply was sent by the respondents, despite receipt of the letters/reminders/requests. As the respondents failed to make an appointment in terms of the agreement, hence, the present writ petition has been filed.

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3. On the other hand, learned counsel appearing for the respondent, by referring to the written statement filed on behalf of the respondent-Corporation, contends that the contract was not terminated and rather the same was abandoned by the petitioner, without any reasons. She submits that even the bank guarantee had been encashed by the petitioner illegally and in connivance with the officials of the respondent corporation regarding which an FIR No.39 dated 27.03.2023 under Sections 406, 409, 420 and 120-B of the Indian Penal Code was also registered at Police Station, Sector 17, Chandigarh. She submits that subsequently the contract was allotted to M/s Frank Services on 01.11.2021 who also paid salaries to the staff of the petitioner for the month of October, 2021. She has, however, not disputed that the contract was allotted to the petitioner and submits that there is an arbitration clause as per the terms and conditions and the rival claims can be decided by the arbitrator in terms of the agreement executed between the parties. Clause 36 of the contract agreement is extracted as under:-

“Clause 36 of the general terms and conditions of the Work Order reads as under:-

36. In the event of any dispute of difference arising out of or in any way touching or concerning this tender, whatsoever (except as to matters, the decision of which is specifically provided under this contract), the same shall be referred to the

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sole arbitration of M.D, CITCO, or any person appointed by him or her. The award of such arbitrator will be final and binding on both the parties hereto. The Arbitration and Conciliation Act, 1996 will apply to the arbitration proceedings.”

4. Having heard the learned counsel for the respective parties and considering that there is a valid and enforceable arbitration clause and also that certain disputed claims, as regards to the entitlement of the petitioner and/or the objections against the sustainability of such claim arise for determination, these issues can be decided only by considering the evidence to be led before the arbitrator, in terms of the agreement executed between the parties.

5 Learned counsel for the parties submit that the dispute may be referred to an independent sole arbitrator to be nominated by this Court. It is thus, deemed fit to appoint Sh. A.K.S. Panwar, District and Sessions Judge (Retd.), Mobile No.94164-71999 as a Sole Arbitrator to adjudicate the dispute in the present petition.

5 The fee of the Arbitrator shall be determined in terms of the Schedule 4 of the Arbitration and Conciliation Act, 1996. The nominated Arbitrator shall furnish a declaration as mandated in Section 12 of the Arbitration and Conciliation Act, 1996 and the Schedule attached as regards non-alignment and affiliation to any of the parties.

6 The duration for completion of arbitration proceedings would

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be as mandated in Section 29-A of the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Chandigarh Arbitration Centre, Chandigarh and without prejudice to the seat of arbitration and jurisdiction as agreed upon between the parties.

- 7

Parties are directed to appear before the learned Arbitrator on any date, time and place to be fixed by him at his convenience.
- 8

The petition stands allowed as aforesaid.
- 9

Copy of the order be sent to the appointed arbitrator.

August 30, 2024

raj arora

Whether speaking/reasoned

Whether reportable

(VINOD S. BHARDWAJ)

JUDGE

: Yes/No

: Yes/No