

Neutral Citation No. 2024:PHHC:032244

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

115

ARB-133-2023 (O&M)
Date of Decision:06.03.2024

M/S LAKHBIR CONSTRUCTIONS
THROUGH ITS PARTNER

.... Petitioner

Vs

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Arvind Kashyap, Advocate for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') petitioner has approached this court for appointment of an Arbitrator in view of Clause 70, of IAFW 2249, Annexure P-1 of the general conditions of contract dated 01.09.2018.
2. Counsel for the petitioner submits that the respondents invited tender for 'provision of auditorium at Jalandhar Cantonment' and being the highest bidder, petitioner's tender was accepted vide letter dated 11.07.2019 Annexure P-2, and the contract was allotted CA No.CEJZ/JRC-07/2019-20. Counsel submits that due to delay in handing over of the vacant site, a dispute arose between the parties

and by notice dated 12.12.2022, Annexure P-6, petitioner invoked the arbitration clause and called upon the respondents to appoint an Arbitrator. He submits that although correspondence was exchanged between the parties but the request for appointment of an Arbitrator was neither accepted nor rejected. He submits that the petitioner has filed a petition under Section 9 of the Act, Annexure P-10, for restraining the respondents from taking coercive steps against the petitioner, which is pending.

3. Upon notice, petition has been contested by the respondents by filing a reply, wherein it has been submitted that despite two extensions, petitioner failed to complete the work and show cause notice was issued to him for the slow progress. It has been denied that there was a delay in handing over of the site. Reference has also been made to Clauses 55, 56 and 57 of the IAFW 2249 to submit that as the contract has neither been completed nor terminated, the dispute is not arbitrable.

4. At this stage, counsel for the petitioner has invited the attention of the Court to the stand taken by the respondents in para 2(ix) of the reply to submit that contract has been cancelled and the objection raised by the respondents cannot be sustained.

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

6. A similar situation arose before a co-ordinate Bench of this court in Arbitration case No.466 of 2021 titled ***M/s Trivedi Constructions Vs. Union of India and others***, decided on 24.02.2023

and after noticing the arbitration clause 70, this Court found that as the contract stood determined, the dispute deserves to be referred to an Arbitrator for resolution. Therefore, the sole objection raised by the respondents is over-ruled.

7. For the foregoing reasons, petition is allowed.
8. Sh. Raghunath Prasad Tripathi, ADG, Retd. whose name figures at Sr. No.11 in the Panel of Arbitrators circulated by Military Engineer Services (MES) vide letter dated 07.12.2022, is appointed as an Arbitrator to adjudicate the dispute between the parties subject to compliance of the statutory requirements.
9. Parties are directed to appear before the Arbitrator on the day, time and place to be fixed by the Arbitrator.
10. Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.
11. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
12. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator.
13. Copy of the order be sent to the appointed Arbitrator.
14. Pending miscellaneous application(s), if any, shall stand disposed of.

06.03.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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