



ARB-197-2023

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

(238)

ARB-197-2023

Date of decision:- 28.10.2024

M/S LION SERVICES LTD.

... PETITIONER

VERSUS

MUNICIPAL CORPORATION, S.A.S. NAGAR, MOHALI, PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL.

Present:- Ms. Seema Tiwari, Advocate and
Mr. Jitender Tiwari, Advocate
for the petitioner.

Mr. Ajay Jain, 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 Arbitration Act"), petitioner has approached this Court for appointment of an Arbitrator.

2. Counsel for the petitioner submits that a Management Contract dated 30.04.2015, Annexure P-1, was entered into between the parties and Clause 11.3 thereof, provides for appointment of an Arbitrator to resolve the dispute, if any, between the parties. Counsel submits that the contract was for mechanical and manual sweeping of roads falling under the jurisdiction of the respondent at S.A.S. Nagar, Mohali for a period of five years, which

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was extended upto February, 2022. She submits that some disputes arose between the parties as the respondent withheld amounts payable to the petitioner. By making a reference to legal notice dated 25.07.2022, Annexure P-10, she submits that the petitioner called upon the respondent for “direct discussion” as laid down in Clause 11.2 of the Contract, but, the discussions did not fructify into any settlement. Counsel submits that the petitioner invoked the Arbitration Clause by serving another legal notice dated 01.10.2022, Annexure P-11 and nominated an Arbitrator, and by a subsequent notice dated 02.05.2023, Annexure P-14, petitioner replaced the proposed Arbitrator by another nominee. He submits that the notices, Annexures P-11 and P-14, respectively, have remained unattended.

3. Upon notice by this Court, petition has been contested by the respondent by filing a response, wherein it has been submitted that a Committee was constituted in December, 2021 and it submitted a report on 17.02.2022. Some additional amount, which was found due, was duly disbursed to the petitioner and the petitioner is not entitled to further payment. He urges that a representative of the petitioner was a member of the Committee and as the report of the Committee was acceptable to the petitioner, the petitioner withdrew the civil suit, which had been instituted by it for restraining the respondent from encashing the bank guarantee. Another argument has been raised by counsel for the respondent that notice, Annexure P-4, infact is a fresh notice invoking the arbitration and the instant petition, which has been filed on 02.05.2023 itself, is pre-mature as the petitioner has not given a 30 days notice to the respondent before

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approaching this Court.

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

5. A perusal of notice, Annexure P-14, shows that it is in-continuation of the notice, Annexure P-11, served by the petitioner, whereby it had invoked the Arbitration Clause. By Annexure P-14, the petitioner has substituted the name of the Arbitrator originally proposed by it. Annexure P-14 can by no stretch of imagination be read as a fresh notice invoking the Arbitration Clause. The withdrawal of the civil suit by the petitioner does not bar the remedy under the Arbitration Act. As to whether petitioner is entitled to the amount, as claimed by it, is a matter, which would be determined by the Arbitrator. Therefore, arguments raised by counsel for the respondent are rejected. As the agreement, Annexure P-1, Arbitration Clause and the notice, Annexure P-11, invoking the said Clause are admitted, this Court is of the view that there is no hindrance in acceding to the prayer made in the petition.

6. At this stage, counsel for the petitioner submits that as the claim is Rs.6.37 crore (approx.), besides interest etc., instead of appointing a Arbitral Tribunal comprising of three Arbitrators, a sole Arbitrator be appointed, so as to save time and expense.

7. Her request appears to be genuine and is accepted.

8. Accordingly, petition is allowed. Mr. Justice (Retd.) Ranjit Singh, resident of H.No. 1024, Sector 27-B, Chandigarh, Mobile No. 09899791094, a former Judge of this Court, is nominated as an Arbitrator to

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adjudicate the dispute between the parties, subject to compliance of statutory provisions.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

10. Parties will be at liberty to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.

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

12. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Ranjit Singh.

(SUVIR SEHGAL)
JUDGE

28.10.2024

Kamal

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