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

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Date of decision:-24.09.2024

Tata Motors Limited

...Petitioner

Versus

Punjab Bus Metro Society and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Abhiraj Bhandari, Advocate for
Mr.Inderjeet, Advocate
for the petitioner.

Mr.Vikas Singh, Advocate and
Ms.Anamika Sheoran, Advocate
for the respondents.

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 respondents floated an e-tender for “Design, Manufacture, Supply and Commissioning of 93 No., 900 MM Diesel Fuelled Fully Built AC Standard Size BRT Buses with Automatic Transmission System”, as per specifications and the petitioner submitted its bid, which was accepted. A letter of award dated 26.08.2016, Annexure P3, was issued and bank

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guarantees were furnished by the petitioner. Counsel asserts that as per the letter of award, the buses were duly delivered, however, at the time of releasing the final payment, some amount was withheld by the respondents on a flimsy pretext. Counsel submits that the petitioner sent several reminders for the release of payment and by legal notice dated 14.10.2021, Annexure P11, requested the respondent to amicably settle the issue. However, by its reply dated 18.11.2021, Annexure P12, respondents asked the petitioner to remove the alleged deficiencies before any meeting could be fixed. Counsel submits that the petitioner sent a rejoinder, but without any result and by letter dated 09.03.2022, Annexure P14, respondents asked the petitioner to extend the bank guarantees. Counsel submits that another notice dated 11.04.2022, Annexure P15, was sent to the respondents to release the payment before instituting the present petition.

3. Alongwith its reply to the petition, respondents have placed on record a copy of Contract Agreement dated 14.10.2016, Annexure R1. Petition has been contested by the respondents submitting that the intelligent transport system installed in the buses was not functional and the deficiency was pointed out to the petitioner, however, it failed to remove it, despite repeated reminders. Counsel for the respondents has opposed the petition by submitting that the petitioner has failed to invoke the arbitration clause before filing the present petition.

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

5. RPF document, Annexure P2, forms part of Contract



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Agreement dated 14.10.2016, Annexure R2. Relevant Clauses of RPF document, Annexure P2, which provide for resolution of disputes, are reproduced hereunder:

“43 Settlement of Dispute and Arbitration

43.1 Amicable Resolution

(a) Save where expressly stated otherwise in this Contract, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Contract between the Parties and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth in sub-clause (b) below.

(b) Either Party may require the Dispute to be referred to “Secretary, Transport Department, Government of Punjab, for amicable settlement. Upon such reference, both the Parties and the “Secretary”, Transport Department, Government of Punjab, “Authority” or his nominee (who can be an employee of Authority dealing with the Contract or otherwise) shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably resolved within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions given below.

43.2 Arbitration

(a) Arbitrators



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Any dispute which is not resolved amicably as provided in Clause 43.1 (a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a Retired Justice of High Court as Sole Arbitrator, to be appointed by the “Member Secretary, Punjab Bus Metro Society.” Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any amendments thereto. The arbitrator shall issue a reasoned Award.

(b) Place of Arbitration

The place of arbitration shall be Chandigarh.

(c) to (g) x x x”

6. Clause 43.1 mandates that the dispute at the first instance has to be attempted to be resolved in terms of Clause 43.1 (b), and may be referred to the Secretary, Transport Department, Government of Punjab. A perusal of the communications placed on the record by the petitioner show that dispute was never referred to the Secretary of the department concerned. Rather, an examination of Annexure P11, upon which reliance has been placed by the petitioner, shows that it has been addressed to the General Manager, who is not the competent authority under Clause 43.1 (b).

7. Counsel for the petitioner could not point out the notice invoking arbitration clause, which had been served upon the respondent prior to the filing of the present petition. Counsel has referred to notice, Annexure P11, to submit that this has to be read as the notice invoking the arbitration clause. Paras 5 and 6 of the said notice read as under:



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- “5. As per clause 43 titled **“SETTLEMENT OF DISPUTE AND ARBITRATION”** before filing of any litigation parties are agree to amicably settle the issue that we call upon to you for amicably resolution. You are advise to fixup a Date & time for the meeting to resolve the issue if any.
6. Please be informed that failing to do as above our client shall be compelled and constrained to take appropriate legal measures under the agreed terms towards Civil/Criminal/Arbitration which shall be borne at your sole cost and peril.”
8. A perusal of the above reproduction shows that it is a notice issued by the petitioner calling upon the respondent to amicably resolve the dispute, failing which petitioner shall be impelled to initiate legal measures. This cannot be read as a notice invoking the arbitration clause and does not meet the mandate of Section 21 of the Act. In the absence of a notice under Section 21, *ibid*, this petition has to be held as pre-mature. The petition, therefore, must fail and is dismissed as such.
9. However, liberty is granted to the petitioner to approach this Court again, if so advised, after exhausting the mechanism provided under the Clause 43 and serving a notice invoking the arbitration clause.

(SUVIR SEHGAL)
JUDGE

24.09.2024

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Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No