



ARB-325-2022

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

108-2.

ARB-325-2022

Date of decision:12.08.2024

**KALPATARU PROJECTS INTERNATIONAL LTD
...PETITIONER**

VS.

**DIRECTOR, KALPANA CHAWLA GOVT MEDICAL
COLLEGE, KARNAL AND ANOTHER ...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rohit Khanna, Advocate,
Mr. Simran Sharma, Advocate and
Ms. Arshya Arora, Advocate for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

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 to resolve the disputes between the parties.

2. Counsel for the petitioner submits that a construction contract dated 09.01.2014, was executed between the petitioner and respondent No.2. By referring to the terms of the contract, he submits that respondent No.1 has an active role in the execution of the contract and

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the entire payment had to be made by respondent No.1 to respondent No.2, who was to further disburse it to the petitioner. Counsel submits that a dispute arose between the parties and the petitioner approached the Engineer In-charge and the Reviewing Authority by its letters dated 22.11.2021 and 27.12.2021, Annexures P-7 and P-9, respectively, but claim was rejected by communications dated 22.12.2021 and 28.01.2022, Annexures P-8 and P-10, respectively. According to the counsel, an appeal was filed on 10.02.2022, Annexure P-11, before the Appellate Authority i.e. respondent No.1, which did not find favour and communication dated 10.03.2022, Annexure P-12, was received by the petitioner intimating its fate. A notice dated 07.04.2022, Annexure P-13, was served upon both the respondents invoking arbitration clause No.25 as laid down in the General Conditions of the Contract, but it remained unattended.

3. Upon notice by this Court, respondents No.1 and 2 have filed separate replies, contesting the petition. Mr. Aman Bahri, Addl. A.G., Haryana, by referring to the stand taken by respondent No.1 in its reply as well as additional affidavit, submits that the State has no role and is not bound by the agreement entered into between respondent No.2 and the petitioner. He submits that the contract was executed on a turnkey basis and respondent No.1 has made the entire payment to respondent No.2.

4. Counsel for respondent No.2, on the other hand, does not have any objection, in case, the prayer made in the petition is acceded to and

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he submits that respondent No.2 will raise all the objections including that of jurisdiction and limitation, before the Arbitral Tribunal.

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

6. The objection raised by the State deserves to be noticed and rejected. A perusal of the contract agreement shows that firstly the construction work was being executed on behalf of respondent No.1 and respondent No.1 has an active role in its execution. Respondent No.1 has been defined as the client in the contract agreement and exercises the power of Appellate Authority against any decision taken by the Engineer In-charge as well as the Reviewing Authority. Notice invoking the arbitration clause is also required to be served upon it, which has been done but respondent No.1 has failed to appoint an Arbitrator in terms of the arbitration clause. However, without delving further while accepting the petition, this Court deems it appropriate to leave it open for the learned Arbitrator to decide this aspect.

7. Petition is allowed. Mr. Justice (Retd.) Rajive Bhalla, a former judge of this Court, H. No. 257, Sector 10-A, Chandigarh, Mobile No.9780008111, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties.

8. Liberty is granted to respondent No.1 to raise all the objections before the learned Arbitrator including the necessity of its presence in the arbitration proceedings.

9. Liberty is further granted to the said parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
10. 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 made hereinabove will not be binding on the learned Arbitrator.
11. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) Rajive Bhalla.

12.08.2024

(SUVIR SEHGAL)

JUDGE

sheetal

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