



ARB-369-2023 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

236

ARB-369-2023 (O&M)
Date of Decision: 22.10.2024

M/s Brahmaputra Infrastructure Ltd.

... Petitioner

Vs

Chief Engineer, NH, Punjab PWD (B&R) and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.
Mr. Rohit Ahuja, DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitral Tribunal to adjudicate the dispute between the parties.
2. Counsel for the petitioner submits that an agreement for construction of a Railway Over Bridge on National Highway-05 at Ferozepur was entered into between the parties pursuant to the acceptance of the bid given by the petitioner vide letter dated



09.02.2016, Annexure P-1. Mr. Mahajan, submits that there was a hold up in handing over of the encumbrance free site as well as delay in making payments and some amount due to the petitioner was withheld. He submits that a dispute arose between the parties and by virtue of letter dated 26.06.2019, Annexure P-3, petitioner raised claims, which were referred to a committee of experts to act as Conciliator. By referring to the minutes of the meeting held on 27.11.2019, Annexure P-4, he submits that all the claims were rejected. Counsel submits that petitioner raised some additional claims by letter dated 26.08.2022, Annexure P-6, which were not referred to the Conciliator within the stipulated period of 30 days, as provided in Clause 26.2 of the Contract Agreement and the petitioner issued notice dated 12.11.2022, Annexure P-7, invoking the arbitration clause 26.3. He submits that at that stage vide communication dated 09.12.2022, Annexure P-8, the respondents fixed the date for appearance before the Conciliator but as the matter was referred to the Conciliator after the expiry of stipulated period, petitioner did not participate in the proceedings. He submits that on 14.12.2022, Annexure P-9, petitioner nominated an Arbitrator and by their letter bearing endorsement dated 06.02.2023, Annexure P-10, respondents referred the matter to the Ministry of Road Transport and Highways, Government of India, requesting it to nominate an Arbitrator for settlement of the disputes.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that



by communication dated 22.09.2022, Annexure R-4, respondents had appointed a Conciliator, but the petitioner deliberately did not participate in the proceedings. State counsel submits that there was delay in the completion of the project and the time period for its completion was extended to 07.08.2018. It is the stand of the respondents that the petitioner is responsible for the delay. By making a reference to the affidavit, Annexure R-3, submitted by the petitioner, State counsel submits that the petitioner has waived the right to claim any financial benefit due to the delay in the handing over of the encumbrance free land.

4. At this stage, counsel for the petitioner submits that the affidavit, Annexure R-3, was not voluntary as the petitioner had made a huge investment in man and machinery to execute the allotted work. It is his specific case that the letter, Annexure R-4, has been endorsed to the petitioner on 03.10.2022, which was beyond the stipulated period as mentioned in the arbitration clause.

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

6. From the respective stand taken by the parties, it is evident that an agreement was entered into between the parties, which contains an arbitration clause. The chain of correspondence on the record shows that a dispute exists between the parties and the petitioner has exhausted the pre-reference mechanism as provided in the arbitration clause. In **Duro Felguera, S.A. versus Gangavaram Port Limited (2017) 9 SCC 729**, Hon'ble Supreme Court has held that

*ARB-369-2023 (O&M)**-4-*

Court's intervention at the stage of appointing an arbitrator is very limited and this intention as incorporated in Section 11(6-A) of the Arbitration Act, ought to be respected. As to whether the affidavit, Annexure R-3, executed by the petitioner is under financial duress or voluntary has to be determined by the arbitrator and this Court refrains itself from examining or commenting upon it. This Court, therefore, does not have any hesitation in acceding to the prayer made in the petition.

7. As the respondents have failed to appoint an Arbitrator till the institution of the petition under Section 11(6) of the Arbitration Act, the jurisdiction to appoint an Arbitrator vests with this Court. In order to save time and expense, this Court is of the view that the appointment of a sole Arbitrator would comply with the mandate of the statute.

8. Accordingly, petition is allowed. Mr. Justice (Retd.) Ram Chand Gupta, former Judge of Punjab and Haryana High Court, # 215CP, Sector 4, M.D.C., Panchkula, Mobile No.097800-08147, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience. Liberty is granted to the parties to make a request before the Arbitrator for holding the proceedings at Patiala.

10. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any



ARB-369-2023 (O&M)

observation made hereinabove will not be binding on the learned Arbitrator.

11. A request letter along with a copy of this order be sent to Mr. Justice (Retd.) Ram Chand Gupta.

22.10.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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