



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

CWP-26390-2023 (O&M)

Date of decision: 24.05.2024

M/s Vasu Construction Company

....Petitioner

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. R.P.S. Bara, Advocate, and
Mr. Karmanbir Singh Kharbanda, Advocate,
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
Mr. Karan Jindal, Assistant Advocate General, Haryana,
Ms. Kushaldeep Kaur, Advocate.

Mr. Deepak Balyan, Advocate,
for respondent No.2.

ARUN PALLI, J. (Oral)

Upon hearing learned counsel for the parties and the order that we propose to pass, a detailed reference to their respective pleadings is clearly avoidable.

The work for construction of an office building for Municipal Corporation, Panchkula, at plot No. IP-3, Sector-3, Panchkula, was assigned to the petitioner (M/s Vasu Construction Company), vide work order No.16031/XEN-II, dated 05.12.2019 (P-2), for an amount of Rs.29,49,12,844/-. However, as indicated in the impugned order dated 22.02.2023 (P-6), owing to a fundamental breach of the tender conditions, delay in execution of work and the inability expressed by the petitioner to complete the pending works, the contract dated 11.12.2019 (P-1), entered into between the parties, was terminated per clause 56 of



the agreement. Consequently, the firm was held liable to pay the following penalties:-

“i) Liquidated damages to the tune of Rs.2,94,91,284.00 (two crore ninety four lakh ninety one thousand two hundred eighty four only) as per clause No.49 of Conditions of the Contract read with clause 24 of the contract data.

ii) Pay penalty to the extent of 20% of the value of the work not completed as provided in Clause 31 of the Contract Data;

iii) The firm is debarred from giving tender for a period of two years;

iv) The performance bank guarantee submitted by the Firm amounting to Rs.1,47,45,642/- is ordered to be forfeited. The said guarantee be got encashed for recovering of the aforesaid liquidity damages. The balance liquidate damage and additional penalty may be recovered from any amount retained in respect of the said work in question and balance, if any, in due course of law;

v) The remaining work may be got done from any another agency at the risk and cost of the firm.

Further, the Firm is also liable to pay for the loss suffered by the Corporation on account of illegally removing 650-700 Cft. Earth from site.”

In the given circumstances, Municipal Corporation, Panchkula, vide notice dated 27.10.2023 (P-7), invited fresh e-tenders for execution of the pending works. But, as is discernible from the records, the Coordinate Bench, vide order dated 24.11.2023, restricted the respondents to only finalize the bids. As a result, the tender process remains inconclusive. And the work has not been awarded to any of the participating tenderers. Similarly, while issuing notice of motion on 18.12.2023, the operation of the impugned order dated 22.02.2023 (P-6),

as regards the debarment/blacklisting of petitioner-firm for a period of



two years was also stayed. It is not in dispute either, that the said order is operative to date.

However, having argued the matter at some length, learned counsel for the parties, considering the nature of the issues that arise for consideration and the project being time sensitive, have reached a consensus: since clause 25 of the contract dated 11.12.2019, envisages an 'Arbitration Agreement' and particularly, for the petitioner has already invoked the said clause, vide notice dated 07.10.2023, it would be expedient if the matter is referred for arbitral determination of the dispute. Accordingly, it is agreed that:

- a) All the issues and claims raised by the petitioner in the petition at hand, along with any other claim in respect of the subject contract, including the issue of debarment and risk and cost, shall be decided by the Arbitrator in the arbitral proceedings.***
- b) The interim order dated 24.11.2023 be modified and liberty be granted to the respondent-Corporation to raise construction of the Municipal Corporation Building either through the existing tender floated on 27.10.2023, by issuing the necessary corrigendum, or by inviting fresh tenders, if so advised. However, it is clarified that the said process will not be at the risk and cost of the petitioner. For the issue as regards execution of the pending works at the risk and cost of the petitioner would be a subject matter of dispute in the arbitral proceedings.***
- c) The interim order dated 18.12.2023, vide which, the blacklisting/debarment of the petitioner-firm was stayed, shall continue to operate till finalization of the arbitral proceedings.***

Learned counsel for the parties are *ad idem* that a Single Member Arbitral Tribunal be appointed for determination of the dispute at hand and have, accordingly, proposed the name of Sh. B.M.Bedi,



Thus, in the wake of the position sketched out above and in terms of the consensus that has been reached between the parties, Sh. B.M.Bedi, District & Sessions Judge (Retd.), is appointed as a Single Member Arbitral Tribunal to determine the dispute/issues, as indicated in ‘**clause a and b**’ (*ibid*). And, as also agreed, the arrangement set out in ‘**clause c**’ shall continue to operate till final determination of the dispute. Accordingly, learned counsel for the parties shall appear before the Arbitrator on 11.06.2024 at 11:00 AM.

The petition is disposed of, in the above terms.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

24.05.2024
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No