

CWP-26966-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

113+203

CWP-26966-2023 (O & M)

Date of decision:23.04.2024

CREATIVE BUILDERS

...PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Meenal Garg, Advocate
for the petitioner.

Ms. Amrita Garg, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

1. By way of instant writ petition filed under Article 226 of the Constitution of India, petitioner has approached this Court *inter alia* for issuance of a writ in the nature of certiorari for quashing order dated 14.09.2023, Annexure P-5, passed by the Arbitrator.

2. Facts, in brief, are that petitioner was allotted construction work vide work order dated 31.08.2016. Clause 25 of the General Terms and Condition of the Contract, (for brevity "GTCC") contained a provision for resolution of dispute through the medium of arbitration. Some differences arose between the parties and on a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), this Court by order dated 23.02.2023, Annexure P-2, appointed a

sole Arbitrator. Parties appeared before the Arbitrator and filed their claim as well as statement of defence. An application dated 17.08.2023, Annexure P-3, was filed by the respondents under Section 16 of the Act for directing the petitioner to pre-deposit the amount as provided in Clause 25 (viii) of the GTCC. Petitioner contested the application and vide impugned order, Annexure P-5, the learned Arbitrator disposed of the application by granting an opportunity to the petitioner to deposit the amount. Upon notice, respondents have not filed any response.

3. Counsel for the petitioner has contended that Clause 25 (viii) of the GTCC is violative of the Constitution of India and cannot be enforced. On the other hand, State counsel has invited the attention of the Court to order dated 08.11.2023, Annexure P-6, passed by this Court in petition under Section 11(6) of the Act, to contend that the petitioner is bound to comply with all the conditions of Clause 25 of the GTCC.

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

5. At the outset, Clause 25 (viii), *ibid*, deserves to be noticed and is reproduced hereunder:-

“viii) It shall be an essential term of this contract that in order to avoid frivolous claims the party invoking arbitration shall specify the dispute based on facts and calculations stating the amount claimed under each claim and shall furnish a "deposit-at-call" for ten percent of the amount claimed, on a schedule bank in the name of the Arbitrator, by his official designation who shall keep the amount in deposit till the announcement of the award. In the event of an award in favour of the

claimant, the deposit shall be refunded to him in proportion to the amount awarded w.r.t. the amount claimed and the balance, if any, shall be forfeited and paid to the other party.”

6. An identically worded clause came up for interpretation before the Hon'ble Supreme Court in **Icomm Tele Limited Versus Punjab State Water Supply and Sewerage Board and another (2019) 4 SCC 401.**

Striking down the clause as violative of Article 14 of the Constitution of India, it has been held that deterring a party to an arbitration from invoking the alternate dispute resolution process by pre-deposit of 10% would discourage arbitration and it is contrary to the object of de-clogging the Court system. Court is also of the view that it would render the arbitral process ineffective and expensive. In **Lombardi Engineering Limited Versus Uttarakhand Jal Vidyut Nigam Limited 2023 SCC Online SC 1422**, the three judges bench of the Supreme Court came to the conclusion that the condition for pre-deposit of the claimed amount to initiate arbitration, deserves to be ignored. The clause regarding pre-deposit therefore, cannot enforced.

7. Insofar as the argument raised by the State counsel is concerned, it may be noticed that while appointing an Arbitrator by order dated 23.02.2023, Annexure P-2, this Court observed that the reference would be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit. However, on an application for recall filed by the petitioner, this Court has clarified the previous order. Order passed by this Court on 08.11.2023, Annexure P-6, is reproduced hereunder:-

“Notice of the application be issued to non-applicant.

At this stage, Mr. A.S.Natt, AAG, Punjab, who is present in the Court has put in appearance on behalf of respondent-State.

Having heard the learned counsel for the applicant-petitioner and learned State counsel, this Court does not find any ground for recalling order dated 23.2.2023. It is however, clarified that the condition regarding pre-deposit shall be enforced in accordance with and only to the extent of the settled legal position regarding forfeiture.

The application stands disposed of accordingly.”

8. This Court made it clear that the clause regarding pre-deposit can be enforced to extent it is permissible in accordance with the settled legal position. Therefore, respondents cannot insist that it is obligatory for the petitioner to make the pre-deposit.
9. For the afore-going reasons, petition is allowed. Impugned order dated 14.09.2023 passed by the learned Arbitrator is set aside and the application, Annexure P-3, filed by the respondents, is dismissed.
10. Parties are directed to appear before the learned Arbitrator on 06.05.2024 (the date already fixed, as informed by counsel for the petitioner) for further proceedings in accordance with law.
11. Pending application(s) are disposed of.

23.04.2024
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(SUVIR SEHGAL)
JUDGE

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