



ARB-161-2024

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

297

ARB-161-2024

Date of decision: 05.05.2025

M/S GAGANDEEP SINGH AND ASSOCIATES

....APPLICANT

Vs.

**GREATER AREA MOHALI DEVELOPMENT AUTHORITY THROUGH
ITS CHIEF ADMINISTRATOR AND ANOTHER**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Dheeraj Mahajan, Advocate
for the applicant.

Mr. Manpreet Singh Longia, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of an Arbitrator.
2. The parties entered into arbitration agreement dated 02.07.2021. A dispute erupted between the parties. The applicant served notice upon respondent seeking resolution of dispute through arbitral tribunal but to no avail.
3. The applicant was allotted work of hedging and fencing around the boundaries of green belts of Aerocity, SAS Nagar. The work was to be completed within 6 months and one year period was prescribed for supervision. The applicant completed the work. The Divisional Engineer (Horticulture) vide letter dated 24.03.2022 imposed 1% liquidated damages (for short 'LD') upon the applicant. The said amount was increased to 5% vide communication dated



14.07.2022. The applicant approached Superintending Engineer against action of the Divisional Engineer. The Superintending Engineer vide order dated 12.09.2023 reduced the amount of LD from 5% to 0.25%. The applicant served notice dated 15.06.2023 upon respondent *qua* different claims. The respondent did not adjudicate claims of the applicant. It served another notice dated 19.08.2023 but to no avail.

4. Mr. Manpreet Singh Longia, Advocate submits that Superintending Engineer has already passed order dated 12.09.2023, thus, dispute raised by applicant cannot be referred to Arbitrator. Superintending Engineer has passed order which is not under challenge, thus, said order has attained finality. As per Clause 25 of General Terms of Contract, decision of Superintending Engineer is final which is not under challenge.

5. I have heard arguments of both sides and with the able assistance of learned counsel perused the record.

6. The respondent is relying upon Clause 25 of the General Terms of Contract. The said clause is reproduced as below:-

“25. DISPUTES RESOLUTION MECHANISM

- i) If any dispute or differences of any kind what-so-ever arise between the Authority, its authorized representatives and the contractor in connection with or arising out of this contract or the execution of work, these shall be resolved as under.*
- ii) Whether before its commencement or during the progress of Project/Work or after the termination, abandonment or breach of the contract, the dispute shall, in the first instance, be referred for settlement to the Engineer of the work and he shall, within a period of sixty days after being requested in writing by the contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so referred shall, subject to arbitration as hereinafter provided,*



be final and binding upon the Contractor. In case the work is already in process, the contractor shall proceed with the execution of the work on receipt of the decision of the Engineer as aforesaid with all due diligence, whether any of the parties requires arbitration as here in after provided or not.

- iii) If the Engineer has conveyed his decision to the contractor and no claim for arbitration has been filed by the contractor within a period of sixty days from the receipt of the latter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all.*
- iv) If the Engineer fails to convey his decision within a period of sixty days from the date on which the said request was made by the contractor, he may refer the dispute for arbitration as hereinafter provided.*
- v) All disputes or differences in respect of which the decision is not final and conclusive shall, at the request of either party made in communication sent through registered A.D. post, be referred to the sole arbitration of a Superintending Engineer of Greater Mohali Area Development Authority acting as such at the time of reference unless debarred from acting as an Arbitrator by an order of the Authority, in which event, the Employer shall appoint any other technical officer of the department to act as an arbitrator on receipt of a request from either party.*
- vi) The Employer shall have the authority to change the arbitrator on an application by either the contractor or the Engineer requesting change of arbitrator giving reasons thereof, either before the start of the arbitration proceedings or during the course of such proceedings. The arbitration proceedings would stand suspended as soon as an application for change of Arbitrator is filed before the Employer and a notice thereof is given by the applicant to the*



Arbitrator. The Employer after hearing both the parties may pass a speaking order rejecting the application or accepting to change the arbitrator or simultaneously, appointing a technical officer as Arbitrator.”

7. From the perusal of above quoted Clause, it is evident that Clause 25(ii) is applicable where dispute is raised by Contractor. He has to approach to Engineer who is supposed to pass order within 60 days. In case of settlement of dispute at the level of Engineer, matter is not referred to Arbitrator. In case Engineer fails to convey his decision within 60 days from the date of request made by Contractor, he may refer the dispute for arbitration. The dispute at the request of party, at the first instance is referred to the sole arbitration of Superintending Engineer of Greater Mohali Area Development Authority (for short ‘GMADA’) . The contention of respondent is misplaced that Superintending Engineer has passed order acting as Arbitrator in terms of Clause 25(v) of Arbitration Agreement. The Superintending Engineer was considering representation/appeal of applicant against the decision of Engineer who had imposed LD. The dispute raised by applicant by notice dated 15.06.2023 followed by August’ 2023 notice was entirely different. The said dispute was never adjudicated by any Authority, thus, matter needs to be referred to an Arbitrator.

8. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

9. Mr. Justice Darshan Singh, former Judge of this Court, residing at House No. 56, Sector 16-A, Chandigarh, Mobile No.8558809940 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is



requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

10. The parties at the first instance will appear before the Arbitrator on 20.05.2025 at 10.00 A.M. and thereafter as directed by learned Arbitrator.

11. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended.

12. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

13. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

14. A request letter along with copy of this order be sent to Mr. Justice Darshan Singh.

05.05.2025
manoj

[JAGMOHAN BANSAL]
JUDGE

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