



ARB-503-2023

-1-

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

241

ARB-503-2023

Date of Decision: 03.09.2025

M/s ETA Engineering Private Limited

...Applicant

Versus

Post Graduate Institute of Medical Education & Research, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Raghav Kapoor, Advocate for the applicant

Ms. Madhu Dayal, Advocate for the respondent

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. Pursuant to tender, the bid of the applicant was accepted by the respondent vide letter dated 23.02.2017. A dispute erupted between the parties. There is an arbitration clause in the Conditions of Contract. The applicant served notice upon the respondent seeking resolution of dispute through Arbitral Tribunal but to no avail.

3. Learned counsel for the respondent submits that there was delay in execution of work on the part of applicant, thus, Superintending Engineer determined compensation and recovered from the Bank Guarantee. The decision of Superintending Engineer as per contract is final. The dispute raised by the applicant cannot be referred to Arbitral Tribunal. The case of applicant falls under exceptional clause. The dispute raised by the applicant



is excepted dispute, thus, can be raised in Civil Court and not before Arbitral Tribunal. In support of her contentions, she relies upon judgment of Hon'ble Supreme Court in *M/s Mitra Guha Builders (India) Company v. Oil and Natural Gas Corporation Limited, (2020) 3 SCC 222* wherein it has been held that if parties have consciously agreed to exclude few matters from scope of Arbitration, the Court cannot refer the matter to Arbitral Tribunal.

4. Learned counsel for the applicant submits that there was no delay on the part of applicant. The question of delay in execution of work has to be determined by an independent authority. As per Clause 25 of Conditions of Contract, the matter has to be referred to Arbitral Tribunal. As per Clause 2, Superintending Engineer has power to determine compensation, however, question of delay has to be determined by Arbitral Tribunal. Once it is determined that there was delay on the part of applicant, only thereafter amount of compensation as per specified rates can be determined. A Division Bench of Delhi High Court in *Delhi State Industrial & Infrastructure Development Corporation Limited v. M/s H.R. Builders, (2022) 4 High Court Cases (Del) 123* while adverting to identical clause has held that question of delay has to be adjudicated by Arbitral Tribunal.

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

6. The dispute revolves around reading of Clauses 2 and 25 of Conditions of Contract. For the ready reference, Clauses 2 and 25 are reproduced as below: -

“Clause 2

If the contractor fails to maintain the required progress in terms of clause 5 or to complete the work and clear the site on or before the contract or extended date of completion, he shall, without prejudice to any other right



or remedy available under the law to the Government on account of such breach, pay as agreed compensation the amount calculated at the rates stipulated below as the authority specified in schedule 'F' (whose decision in writing shall be final and binding) may decide on the amount of tendered value of the work for every completed day/month (as applicable) that the progress remains below that specified in Clause 5 or that the work remains incomplete.

This will also apply to items or group of items for which a separate period of completion has been specified.

<i>(i) Compensation</i>	<i>@1.5% per month of</i>
<i>for delay of work</i>	<i>delay to be computed on</i>
	<i>per day basis</i>

Provided always that the total amount of compensation for delay to be paid under this Condition shall not exceed 10% of the Tendered Value of work or of the Tendered Value of the item or group of items of work for which a separate period of completion is originally given.

The amount of compensation may be adjusted or set-off against any sum payable to the Contractor under this or any other contract with the Government. In case, the contractor does not achieve a particular milestone mentioned in schedule F, or the re-scheduled milestone(s) in terms of Clause 5.4, the amount shown against that milestone shall be withheld, to be adjusted against the compensation levied at the final grant of Extension of Time. With-holding of this amount on failure to achieve a milestone, shall be automatic without any notice to the contractor. However, if the contractor catches up with the progress of work on the subsequent milestone(s), the withheld amount shall be released. In case the contractor fails to make up for the delay in subsequent milestone(s), amount mentioned against each milestone missed subsequently also shall be withheld. However, no interest, whatsoever, shall be payable on



such withheld amount.”

“Clause 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

- (i) *If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.*

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall



give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

- (ii) *Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be*



no Additional Director-General, the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chief Engineer CPWD or Additional Director General or Director General, CPWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall



apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

7. From the perusal of Clause 25, it is evident that all matters relating to contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same are arbitrable. The matters which are specifically excluded cannot be referred to Arbitral Tribunal. Clause 25 provides that “*except where otherwise provided in the contract*” means that



if something is provided otherwise in the contract, the said would override Clause 25. As per Clause 2, the contractor is liable to pay compensation in case of delay in execution of work. The amount of compensation has to be determined by Superintending Engineer. The amount is calculated at the rates stipulated in Schedule F. The applicant is claiming that there is no delay on his part. This question cannot be determined by Superintending Engineer. In any case, he would not be an independent authority. Case of applicant is squarely covered by judgment of Delhi High Court in ***M/s H.R. Builders (Supra)***. It is apt to notice that Delhi High Court while adjudicating aforesaid case has noticed judgment of Hon'ble Supreme Court in ***M/s Mitra Guha Builders (India) Company (Supra)***.

8. In the wake of above discussion and findings, this Court is of the considered opinion that matter needs to be referred to Arbitral Tribunal.

9. 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.

10. Mr. Jatinder Kumar Khurana, Retired Chief Engineer (Contracts) Military Engineer Services, residing at House No.395, Sector 4, Panchkula, Haryana- 134112, Mobile No.7085051111 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.

11. The parties at the first instance will appear before the Arbitrator on 17.09.2025 at 10:00 AM and thereafter, as directed by learned Arbitrator.

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

**ARB-503-2023****-9-**

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

14. 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.

15. A request letter along with copy of this order be sent to Mr. Jatinder Kumar Khurana.

16. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

03.09.2025
Mohit Kumar

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