

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Arbitration Case No. 297 of 2017
Date of Decision: 15.11.2019

The Mayyar Adarsh Co-operative L/C Society Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vivek Khatri, Advocate,
for the petitioner.

Mr. Pramjit Singh, AAG, Haryana,
for the respondents.

JAISHREE THAKUR, J. (ORAL)

1. This is a petition that has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Contract Agreement for "Improvement" of Uchana - Litani Road.

2. Learned counsel for the petitioner herein would contend that on account of the work that was done, a dispute arose between the parties which was to be referred to the Arbitrator. However, despite several requests, the Arbitrator was not appointed. Ultimately, on a letter dated 28.07.2015 for an appointment of an Arbitrator,

request was declined on the ground that since the petitioner had not deposited security in terms of the Clause 25-A(7) of the Agreement. Aggrieved against the non-appointment of the Arbitrator, this petition has been filed.

3. Counsel for the petitioner would point out that Clause 25-A(1) of the agreement provides for all disputes arising out of the agreement to be referred to the Executive Engineer-in-charge of the work and, therefore, it became incumbent upon the respondents to have referred the dispute to the Arbitrator in terms of Clause 25-A(1) of the agreement.

4. Per contra, learned counsel appearing on behalf of the respondents contends that the Arbitrator was not appointed in terms of the said agreement on account of non-deposit of security in compliance of Arbitration Clause 25-A(7) which mentions the deposit of a security amount.

5. I have heard learned counsel for the parties and find that the objection taken by the respondents for non-deposit of the security as stipulated under Clause 25-A(7) of the agreement would not be sustainable in view of the judgment as rendered by the Supreme Court in *M/s Icomm Tele Ltd. vs. Punjab State Water Supply & Sewerage Board & Anr., 2019(2) ArbILR 359* wherein the Supreme Court was seized of a similar issue where Punjab State Water Supply and Sewerage Board failed to refer the matter to an Arbitrator only on account of non-deposit of the security / deposit -at-call of 10% of the

amount claimed and the aforesaid clause was held to be an unreasonable clause.

6. In view of the above, this Court deems it appropriate to appoint an Arbitrator. Consequently, the petition is allowed. Sh. D.P. Bajaj, who has retired as a Chief Engineer, Punjab, PWD B&R, resident of H. No. 311 Sector-7, Panchkula, is hereby appointed as a sole Arbitrator to resolve the dispute and differences between the parties. The fee shall be payable as per the Chandigarh Arbitration Centre (CAC) Rules, 2018.

15.11.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned Yes.

Whether reportable No.