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

ARB-157-2022

Date of decision:-26.09.2024

M/s Sharma Contractor Pvt. Ltd.

...Petitioner

Versus

Chief Engineer (National Highway), Punjab and another

...Respondents

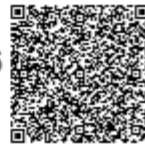
CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr.Dheeraj Mahajan, Advocate
for the petitioner(THROUGH V.C.)

Ms.Amrita Garg, AAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that pursuant to a notice inviting tender, petitioner submitted its bid, which was accepted and petitioner was awarded a contract for construction of road along canal from village Joura to village Mahmoodpura in District Tarn Taran by



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memo dated 27.02.2019, Annexure P1. He submits that an agreement dated 05.04.2019, Annexure P2, was entered into between the parties and Article 26 of the terms and conditions of DNIT, Annexure P3, which form part of the contract agreement, contains a procedure for dispute resolution including appointment of an arbitrator. He submits that some disputes arose between the parties and vide communications, Annexure P4 to P7, petitioner requested the respondents to refer the matter to a Conciliator and to appoint an independent expert in terms of Article 26.2, however, all its efforts went in vain. He submits that by notice dated 27.09.2021, Annexure P8, which was followed by a legal notice dated 16.12.2021, Annexure P9, petitioner called upon the respondents to appoint an arbitrator. He submits that in terms of arbitration clause, the Superintending Engineer has been designated as the authority, who was to propose the names of the arbitrators from the panel maintained by the Society for Affordable Redressal Of Disputes (SAROD), but he did not do so. Counsel submits that as the dispute persists, an arbitrator be appointed.

3. Mr.Mahajan, submits that although the venue of arbitration has been mentioned at New Delhi, but placing reliance upon the judgment of this Court in *M/s I Care Consultancy Versus L & T Finance Ltd. and Ors., Law Finder Doc Id # 2635811*, he urges that this Court has the territorial jurisdiction to entertain this petition.

4. Petition has been resisted by the respondents by filing a reply, by taking a stand that there is no dispute between the parties as the petitioner never initiated the allotted work. Another objection raised by



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the respondents is that the appointment of an arbitrator has to be made from the panel maintained by the SAROD.

5. I have heard counsel for the parties and considered their respective submissions as well as examined the documents placed on record.

6. Both the objections raised by the respondents deserve to be rejected. The respondents have neither denied the agreement nor the arbitration clause. It is evident from the documents on the record that a dispute has arisen between the parties and the petitioner has invoked the arbitration clause. The authority i.e. the Superintending Engineer was to nominate the names of the arbitrators from the panel maintained by the SAROD. However, on his failure to do so, upon the invocation of Section 11 (6) of the Act, the jurisdiction vests to this Court.

7. Accordingly, petition is allowed. Mr. Justice (Retd.) R.L. Anand, a former Judge of this Court, r/o # E 223, Ranjit Avenue, Amritsar, M: 98721-74499, is nominated to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

8. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

9. Parties will be at liberty to raise all the pleas/defences before the Arbitrator.

10. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the



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arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

11. A request letter be sent to Mr. Justice (Retd.) R.L. Anand alongwith a copy of this order.

26.09.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

**(SUVIR SEHGAL)
JUDGE**