

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

241

ARB No. 222 of 2019 (O&M)

Date of Decision: 16.11.2022

CAPITAL TRANSPORT CORP.CHD

Petitioner

Versus

V.K.G.ASSOCIATES ENGINEERS & CONTRACTORS

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Paras Money Goyal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent arbitrator in order to adjudicate the dispute between the parties arising out of work order dated 16.04.2018.

Vide the aforesaid agreement, terms and conditions qua execution of work were settled. Execution of work was undertaken by the petitioner. The piling/ boring was to be done by Hydraulic Piling Rig Sany 235. bore of 1200 mm diameter. The assignment was to be done in all kinds of strata including

soil, gravel hard clay, clay type of soil and the petitioner was to be paid Rs.3,900/- per meter. Further piling/boring with Hydraulic Piling Rig Sany 235. Bore of 1200 mm (diameter) soft rock, hard rock or any type of rock, the petitioner was to be paid Rs.8,500/- per meter. Each pile where boring was to be conducted was at least 22 meters approximately. The work order was entrusted to the petitioner, considering the viability of the project viz-a-viz the petitioner.

The petitioner started the spade work after signing the work order. After arranging the machinery, the petitioner started the work on 30.04.2018 and successfully completed the work assignment of approximately 38 piles by 25.06.2018. Thereafter, the petitioner kept on waiting for further assignment as his machinery and labour were sitting idle. However, no work assignment was entrusted to the petitioner resulting in losses. The petitioner has raised its claim/demand to the tune of Rs.2,17,77,799.04 paise. Only a sum of Rs.35,71,686/- was released in favour of the petitioner in respect of invoice No.8. Minimum commitment of work was to the extent of 128 piles. The petitioner was entrusted the task of only 38 piles, as such the petitioner raised his claim for balance 90 piles which came out to be Rs.99,91,296/- . Further as per the work order, the petitioner was shown a very rosy picture that the work shall exceed 150 piles and in case it remains less than 150 piles, then there would be an escalation of 15% and a definite amount

on account of such escalation would also accrue in favour of the petitioner. The petitioner has also claimed the amount of re-work of piles. In nutshell the petitioner sent a notice on 03.01.2019 in respect of demand of Rs. 2,17,77,799.04 Paise.

Notice of motion was issued on 27.09.2019. Service has already been effected upon the respondent by means of affixation.

On 27.07.2022, none appeared on behalf of the respondent despite service and the case was adjourned for arguments.

After issuance of notice dated 03.01.2019, the petitioner has invoked the arbitration clause. In the reply dated 12.07.2019 in response to the notice of invocation, the respondent did not agree for the appointment of the arbitrator. However, the existence of agreement with arbitration clause is admitted and in case of any dispute the matter has to be referred to the arbitrator to be appointed by the MD of the company. In the aforesaid reply, the respondent has also claimed some amount to be recovered from the petitioner. In case of any reluctance on the part of the petitioner, respondent has threatened that MD of M/s V.K.G. Associates shall appoint an arbitrator for effecting such recovery from the petitioner.

Virtually the pleadings of the petitioner have gone un rebutted.

In view of the stand taken by the parties, a bona fide

dispute exists in view of the claims made by both the parties. Since the agreement has been executed after coming into force the amendment in the act, therefore the appointment of official arbitrator is deprecated in view of law laid down in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1** Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is

lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

In view of the aforesaid facts, I hereby appoint Hon'ble Mr. Justice Rajive Bhalla (retd.), House No.257, Sector 10, Chandigarh (Mobile: 9780008111) as the sole Arbitrator, to resolve the dispute/difference between the parties.

The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent(s) in equal proportion.

The venue will be as per the convenience of the Arbitrator.

The respondent shall also be entitled to raise any counter claim in respect of the stand taken in reply to the notice of invocation.

A copy of this order be dispatched to the Arbitrator at the following address:-

Hon'ble Mr. Justice Rajive Bhalla (retd.), House

No.257, Sector 10, Chandigarh (Mobile:
9780008111).

Petition stands disposed of accordingly.

**(RAJ MOHAN SINGH)
JUDGE**

16.11.2022

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1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No
- 3.