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

**ARB No.377 of 2022(O&M)
Date of Decision: 24.11.2022**

**M/S LORD SHIVA CONSTRUCTION COMPANY PRIVATE
LIMITED**

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ankit Grewal, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of contract agreement dated 26.10.2017

[2]. The respondent No.1 had invited the tender for providing reconstruction and stg. on Halalpur to Jhinjholi upto

Harvali Mor and construction on new road from village Dhanana to Hathwala in District Sonapat. The petitioner being the lowest tenderer was allocated the work assignment. The consideration of contract was Rs.2,67,33,658/-. The work was to be completed within a period of six months i.e. upto 06.05.2018. The petitioner had submitted the performance security of Rs.13,36,700/- on 18.10.2017 and thereafter, proceeded with the work.

[3]. Both the parties are at variance in respect of the *bona fides* in completing and non-completing the work assignment within the time framed. Clause 24 i.e. in the contract agreement reads as under:-

“24. Dispute Redressal System

24.1 If any dispute or difference of any kind whatsoever shall arises in connection with or arising out of this contract or the execution of Works or maintenance of the Works there under, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred for settlement to the competent authority, described along with their powers in the contract data. The competent authority shall, within a period of forty-five 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 review as hereinafter provided, be final and binding

upon the Contractor. In case the Works is already in progress, the Contractor shall proceed with the execution of the works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.

24.2 Either party will have the right of appeal, against the decision of competent authority to arbitrator within a period of 28 days from decision of the competent authority. Either party may give notice to other for refer a decision of the competent authority to An Arbitrator within 28 days of the competent authority written decision If neither party refers the dispute to arbitration within the next 28 days, the competent authority decision will be final and binding.

24.3 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the special Conditions of Contract.”

[4]. The petitioner has valued its claim towards different claims ranging from Claim Nos.1 to 5, 7 and 8, which are tabulated as under:-

Claim No.1	Loss of profit for prevention to execute the balance work of the value of about Rs.2,72,47,141.00 @ 15%	Rs.17,07,032.00
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Claim No.2	Claim toward release of performance Bank Guarantee	Rs.13,36,700.00
Claim No.3	Refund of the security deposits deducted from R.A bills	Rs.4,66,263.00
Claim No.4	Release of Payment of Uncertified Work	Rs.39,38,617.00
Claim No.5	Idleness+under utilization of resources + over heads during the unworkable period because of the Employer inactions and the loss of mobilization	Rs.25,00,000.00
Claim No.7	Litigation Expenses (as to cost)	Rs.10,00,000.00
Claim No.8	Pre-reference pendente lite interest and future interest accredited from the cause of action.	A Matter of Calculation.

[5]. The tentative value of the claim of the petitioner is Rs.1,10,00,000/- plus calculations to be made under Claim No.8 for pre-reference pendente lite interest and future interest accredited from the cause of action.

[6]. Perusal of the Dispute Redressal System in terms of Clause 24 would show that even after the termination, abandonment or breach of the contract, the matter has to be referred for settlement to the competent authority at the first instance. The competent authority thereafter shall within a

period of 45 days after being requested in writing by the contractor convey the decision.

[7]. Learned counsel for the respondent submits that the work could not be completed by the petitioner within the time prescribed and therefore, the contract was terminated.

[8]. Evidently, in the event of termination of contract agreement, the Dispute Redressal System in terms of Clause 24 would apply for which the competent authority was to act in accordance with the clause.

[9]. The petitioner after termination of the contract, filed an application under Clause 24.1 of the Dispute Redressal System for settlement of dispute before the competent authority on 24.07.2021.

[10]. Evidently, the said application has not been answered by the competent authority till date. The delay, if any, in filing the application under Clause 24.1 of the Dispute Redressal System in view of instructions issued by the competent authority under the Disaster Management Act owing to the situation arising out of COVID-19, would remain debatable.

[11]. After filing the application under Clause 24.1 of the Dispute Redressal System, the petitioner ultimately invoked the arbitration clause by notice of invocation dated 25.01.2022. No

reply has been filed to the aforesaid notice of invocation by the respondent.

[12]. *Prima facie* it appears that the parties have a *bona fide* dispute arising out of the work assignment.

[13]. In view of arbitration clause and failure of the competent authority to appoint an Arbitrator, I deem it appropriate to appoint HMJ Navita Singh (Former Judge of this Court), Address-Flat No.403 GH-35, Sector-5, MDC, Panchkula, Contact Nos.2723401, 8558809911 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.

[14]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the 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 both the parties equally.

[15]. The seat of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

[16]. A copy of this order be dispatched to the Arbitrator on

the following address:-

HMJ Navita Singh (Former Judge of this Court),

Address-Flat No.403 GH-35, Sector-5, MDC,

Panchkula,

Contact Nos.2723401, 8558809911

[17]. Petition stands disposed of accordingly.

24.11.2022

Prince

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No