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

(237)

ARB-144-2023

Date of decision:- 15.07.2024

Welways Engineers (India)

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Amit Gupta, Advocate and
Mr. Nikhil Handu, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate
for the respondents.

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 the petitioner was awarded a work for provision of 2 M.W. Solar Energy Project at Ferozepur Cantt. by the respondents vide letter dated 05.08.2017, Annexure P-2. He submits that the work was completed on 29.06.2019 within the period as extended by the respondents. He submits that the petitioner submitted a final bill dated 18.05.2020, Annexure P-4, along with some additional claims, but by their

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communication dated 30.05.2020, Annexure P-5, respondents rejected some of the claims. He submits that petitioner was coerced into issuing a No Claim Certificate as per the respondents were not released releasing the payment. He submits that a chain of correspondence ensued between the parties and the petitioner invoked the arbitration clause by serving notice dated 25.01.2022, Annexure P-17 and by their reply dated 19.02.2022, Annexure P-19, respondents informed him that no further claims can be entertained after the submission of the final bill.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that Clause 70 of IAFW-2249 contains a stipulation that a person to be appointed as an Arbitrator must possess an Engineering Degree or its equivalent. It has been further submitted that due to accord and satisfaction, petitioner is not entitled to any additional claim. A stand has been taken that as the petitioner has submitted a “No Claims Certificate” and has received the payment without any protest, he is not entitled to any additional amount. Counsel for the respondents has made a reference to Clause 65 and 66 of IAFW-2249 to submit that after the payment of the final bill, no further amount is due to the petitioner.

4. I have heard counsel for the parties and considered their respective submissions.

5. The execution of the contract is not denied. There is no dispute between the parties that the agreement contains an arbitration clause, even the notice invoking the arbitration clause has been admitted. As to whether



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the petitioner is entitled to any additional claim, moreso, after having issued a No Claim Certificate is a matter, which would be required to be adjudicated by the learned Arbitrator. Whether the certificate issued by the petitioner is voluntary or under duress would also be required to be determined by the learned Arbitrator as has been held by the Supreme Court in *R.L.Kalathia and Co. Versus State of Gujarat, 2011 (2) SCC 400; M/s Ambica Construction Versus Union of India, 2006 (13) SCC 475* and *Union of India Versus Parmar Construction Company, (2019) 15 SCC 682*.

6. Accordingly, petition is allowed. Sh. V.K. Bhardwaj, Former Chief Engineer U.T., Chandigarh resident of H.No. 1059, Sector 43-B, Chandigarh, Mobile No. 9988853631, is appointed as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute.

7. Parties are directed to appear before the Arbitrator on 20.08.2024 at 11:00 A.M. at the address mentioned above or at any other place, time or date to be fixed by the Arbitrator.

8. Fee shall be paid in accordance with the Fourth Schedule of the Act, as amended.

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

10. Liberty is granted to them to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.

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11. Needless to mention that all the questions arising between them in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

12. Copy of the order be sent to the appointed Arbitrator.

(SUVIR SEHGAL)
JUDGE

15.07.2024

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No