

109

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-87-2017

Date of Decision:- 01.02.2024

KCC BUILDCON PVT. LTD.

..Petitioner

VS

HARYANA STATE ROADS & BRIDGES DEVELOPMENT
CORP. AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rajesh Goyal, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for respondent Nos. 1 to 3.

SUVIR SEHGAL, J.(Oral)

By way of instant application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has approached this Court for appointment of Presiding Arbitrator.

Upon notice, the reply has been filed on behalf of the respondents.

Counsel for the parties are *ad idem* that an agreement dated 29.11.2013 (Annexure P-2) was entered into between the parties and Clause 24.03 contains provision for appointment of Arbitrator. Relevant extract of the Clause is reproduced as under:-

“ (a) *Every party will have the right to appeal against of the order of competent authority to the arbitral tribunal, which will be settled in accordance with the Arbitration and Conciliation Act, 1996. In case the amount of work is less than Rs. 10.00 crores, the matter will be adjudicated by sole arbitrator otherwise by a tribunal of 3 arbitrators. The contractor while invoking arbitration the claimant shall deposit with Engineer a claim fee of @ 2% of the claim amount. On termination of the arbitrator proceedings, "this fee shall be adjusted in the cost, if any, awarded by the arbitrator (or arbitrator tribunal)*

(2)

against the claimant party and the balance remaining after such adjustment, and in the absence of such cost being awarded. The whole of the sum will be refunded within one month of the date of the award. In case of sole arbitrator, Engineer-in-Chief will appoint sole arbitrator from the list approved by the Govt. within 60 days from the receipt of application of the contractor. In case of arbitrator tribunal consisting of 3 Arbitrators, one each to be appointed by the employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress.”

Counsel for the parties submit that the parties have individually appointed their arbitrators but there is no consensus among the arbitrators on appointment of a Presiding Arbitrator.

Learned counsel representing the respondents submits that the petitioner had approached the Indian Roads Congress (IRC) for appointment of the Presiding Arbitrator in terms of the Arbitration Clause and a communication has been sent by the IRC to the petitioner.

Copy of the communication has been handed over to the petitioner.

In view of the above, petition is disposed of. The Indian Roads Congress shall appoint a Presiding Arbitrator in terms of the Arbitration Clause after the completion of the requisite formalities.

01.02.2024
neelam

(SUVIR SEHGAL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes/No
Yes/No