

2023:PHHC:107549

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

ARB-158-2019 (O&M)
Date of Decision:-18.8.2023

Sh. Tarsem Lal Saini ... Petitioner

Versus

General Manager (Engineering) and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nimish Gautam, Advocate for
Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Rajiv Sharma, Advocate for the respondents.

GURVINDER SINGH GILL, J. (Oral)

1. The instant petition has been filed by the petitioner - Sh. Tarsem Lal Saini seeking appointment of an Arbitrator in terms of provisions of Section 11(6) of Arbitration and Conciliation Act, 1996 (hereinafter referred to as '*the Act*').
2. The petitioner had entered into an agreement/letter dated 31.12.2012 (Annexure P-1) with Northern Railways, Baroda House, New Delhi for the purpose of building infrastructure. However, a dispute having arisen amongst the parties, the petitioner issued a legal notice dated 4.5.2017 (Annexure P-3) to the respondents for invoking arbitration clause i.e. Clause 64 of the General Conditions of the Contract (Annexure P-2). The needful not having

been done, the petitioner filed the instant petition seeking appointment of an Arbitrator in terms of provisions of Section 11(6) of the Act.

3. Opposing the petition, learned counsel representing the respondents has submitted that as a matter of fact out of the total amount of Rs.43,78,341/-, a payment to the extent of Rs.42,16,250/- already stands paid to the contractor and that it is only an amount of Rs.31,443/-, which remains unpaid. Learned counsel has further submitted that the legal notice dated 4.5.2017 (Annexure P-3) is absolutely silent as regards the amount claimed and, as such, the respondents are in no position to accept or controvert the claim of the petitioner.
4. This Court has considered rival submissions addressed before this Court.
5. This Court is not to adjudicate upon the claim of the parties or to return any finding as to whether it is only an amount of Rs.31,443/-, which remain unpaid or as to whether the unpaid amount runs in lakhs of rupees. This Court further finds that the petitioner, before submitting letter dated 25.4.2019 (Annexure P-9) regarding appointment of an Arbitrator, had been requesting the respondents for release of the payment as would be evident from letter dated 4.5.2017 (Annexure P-4) & letter dated 20.7.2017 (Annexure P-5).
6. The respondents, on the other hand, had written letter dated 12.10.2018 (Annexure P-6) to the petitioner asking the petitioner to furnish item-wise claims. The petitioner in response to the same had sent his reply dated 25.2.2019 (Annexure P-7), wherein the item-wise detail calculations have been furnished. Even in response to the letter dated 25.4.2019 (Annexure P-9), the respondents have responded by writing a letter dated 6.5.2019

(Annexure P-11) asking the petitioner to furnish complete item-wise details of the claims.

7. It is, in any case, borne out that there was a specific clause for arbitration provided in General Conditions of the Contract (Annexure P-2) and that despite a request having been made, the Arbitrator has not been appointed for no justifiable reasons. The item-wise claim has already been furnished by the petitioner. Whether or not the claim is justified is a matter, which has to be adjudicated by the Arbitrator. As such, the instant petition merits acceptance and is hereby accepted.
8. Shri Jagdish Singh Khushdil, District & Sessions Judge (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Shri Jagdish Singh Khushdil, District & Sessions Judge (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.
9. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.
10. As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients, as also of the Arbitrator, the venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
11. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 18.9.2023 at 11:00 A.M. or any other date suitable to all concerned.
12. A copy of this order be sent to the appointed Arbitrator at the given address:

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H. No. 5412, HIG (Ind.),
Sector 38 West, Chandigarh..
Mobile No.8558803871.

18.8.2023

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No