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

ARB No. 58 of 2018 (O&M)
Date of Decision: 14.10.2022

M/s Kuwar Builders and Developers Engineers @ Contractors
-Petitioner

Versus

Punjab Ex-Servicemen Corporation
-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vineet Sehgal, Advocate,
for the petitioner.

Mr. Chanderdeep Singh, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

1. Petitioner has preferred this petition under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of an independent.

2. Petitioner is a proprietor firm and has executed the work assignment. A contract agreement was executed on 01.11.2011. The aforesaid agreement has an arbitration clause in respect of settlement of dispute by means of arbitration.

3. Clause 47 reads as under:-

***“47. SETTLEMENT OF DISPUTE BY
ARBITRATION:***

All disputes differences of any kind

whatever arising out of or in connection with the contract or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the contract but not later than 28 days after the EIC/Architects has issued the final certificate as provided in clause 38 of this agreement) shall be referred to and settled by Secretary for Defence Welfare and whose decision shall be final and binding on both the parties.”

4. Learned counsel for the petitioner submits that there is a dispute in respect of dues of the petitioner for which he has already invoked arbitration clause on 06.07.2015 by way of notice of invocation dated 06.07.2015. The respondents did not appoint any arbitrator. Ultimately, the petitioner has to file present ARB No.58 of 2018 on 22.02.2018. Petitioner has fixed tentative value of its claim to the tune of Rs.41,47,472/-.

5. Notice of motion was issued on 09.03.2018 and till date, reply has not been filed by the respondents.

6. On 13.09.2022, learned counsel for the respondents sought a very short adjournment and the case was adjourned for today.

7. Today also, reply is not forthcoming.

8. Learned counsel for the respondents seeks to argue

the case orally on the basis of communication issued in respect of mediation between the parties.

9. Evidently, arbitrator has not been appointed nor has the arbitrator entered upon the reference till date.

10. After the amendment Act of 2015 and in view of **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**; **Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755**; **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**, the official arbitrator cannot be appointed.

11. In view of directions issued by the Hon'ble Apex Court in SLP (Civil) No.5306 of 2022 that the cases of this category which are pending for more than one year from the date of filing, must be decided within six months from 19.05.2022.

12. In view of above, I deem it appropriate to appoint **Sh. Beant Singh Bedi, District & Sessions Judge (Retd.), #2826, Sector 61, Mohali, 9417364876** 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.

13. The Arbitrator shall 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) equally.

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

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

Sh. Beant Singh Bedi, District & Sessions Judge

(Retd.),

#2826, Sector 61, Mohali

9417364876

16. Petition stands disposed of accordingly.

14.10.2022

Jyoti Sharma

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No