

2024:PHHC:140930



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

241

ARB-122-2023

Date of Decision: 24.10.2024

M/S ROHAN RAJDEEP TOLLWAYS LTD.Petitioner

Versus

STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ramanjit Singh, Advocate,
for the petitioner.

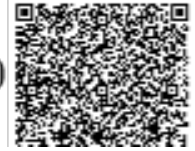
Mr. Rohit Ahuja, DAG, Punjab,
for respondents No.1, 3 and 4.

Mr. Pritpal singh Nijjar, &
Mr. Viraj Gandhi, Advoate,
for respondent No.2-PIDB.

SUVIR SEHGAL, J.(Oral)

1. This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") for appointment of an arbitrator.

2. Counsel for the petitioner submits that pursuant to the notice inviting proposal, petitioner participated in the tender process initiated by respondent No.2 and emerged as the successful bidder. A notice of award dated 01.12.2005 and Memo dated 09.12.2005, (Annexure P-2), were



issued to the petitioner for Construction, Upgradation, Operation and Maintenance of Kiratpursahib-Una Project Road on BOT basis. Counsel submits that the petitioner furnished the requisite performance security by way of a bank guarantee and complied with the other conditions of the notice of award and, a Concession Agreement dated 07.03.2006, (Annexure P-3), was entered into between the parties. He submits that after completion of the project, some disputes arose, which were referred to arbitrator vide letter dated 28.05.2014 and an award dated 06.09.2016, (Annexure P-4), was passed. Counsel submits that vide letter dated 18.10.2019, (Annexure P-5), respondents imposed liquidated damages with regard to alleged delay in the second renewal coat on the road. Counsel submits that in terms of clause 19.1 (a) and 1.1 (b), the petitioner approached the senior representative as well as the Steering Group, but the settlement process could not succeed. In particular, he has made reference to minutes of the meetings dated 22.10.2020 and 24.03.2021, (Annexures P-6 and P-9), respectively. He submits that petitioner filed a petition under Section 9 of the Arbitration Act and despite a restraint order, respondent No.4 issued a letter dated 27.01.2023, (Annexure P-12), to State Bank of India, Pune to transfer an amount of Rs. 54.95 crores on account of additional recovery of liquidated damages for delay in the 1st, 2nd and 3rd overlay. By referring to the notice dated 01.02.2023, (Annexure P-13), counsel for the petitioner asserts that the petitioner invoked the arbitration clause and nominated an Arbitrator, but this notice remained unattended.



3. Upon notice by this Court, petition has been contested by the respondents by filing separate responses. In the reply, filed on behalf of the respondents No.1, 3 and 4, it has been submitted that the letter dated 27.01.2023, (Annexure P-12), has been withdrawn on 28.04.2023, (Annexure R-1), and the petition has become infructuous and Concession Agreement has been terminated vide notice dated 31.03.2023, (Annexure R-2). A stand has been taken by the respondents that three overlays/renewal coats were to be done by the petitioner after a gap of 5, 10 and 15 years, but the petitioner delayed the overlays and vide letter dated 11.02.2022, he has declined to carry out the 3rd overlay. State counsel submits that in this background, the liquidated damages were sought to be recovered from the petitioner.

4. In the separate response filed by respondent No.2, the factual position has not been disputed and a reference has been made to a notification dated 05.02.2024 (Annexure A-1), which is reproduced hereunder:-

*“File No:-1/21/2011-5FE4/39
Government of Punjab
Department of Finance
(Finance Expenditure-IV Branch)*

Dated, Chandigarh the 05th Feb, 2024

To,

1) All the Special Chief Secretaries/Additional Chief Secretaries/ Financial Commissioners/ Principal Secretaries & Administrative Secretaries to govt. of Punjab.



- 2) *The Registrar, Punjab and Haryana High Court.*
- 3) *Managing Director, Punjab Infrastructure Development Board.*
- 4) *Secretary, Punjab Infrastructure Regulatory Authority.*

Subject: Regarding taking decision to appoint the Arbitrators in absence of Chairperson and Members at PIRA.

Madam/Sir,

I am directed to inform you that the following decisions have been taken for appointment of Arbitrators:-

a) The appointment of Arbitrator in cases pending before the Hon'ble High Court, should be left to the discretion of the Hon'ble High Court.

b) The existing list of Arbitrators as mentioned in the Punjab and Haryana High Court and updated time to time will be used for appointment of arbitrators in future cases with the approval of competent authority in consultation with Ld. Advocate General, Punjab. However the Arbitration Fee should not be more than that has been prescribed in Schedule-B of the "Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011.

Sd/-

Under Secretary, Finance

ID. No-1/21/20211-5FE4/40 Dated, Chandigarh; 5/2/2024

A copy of the above is forwarded to the following for kind information, please:-

- 1) *OSD to worthy Chief Secretary to Govt. of Punjab.*
- 2) *OSD to Ld. Advocate General, Punjab.*

Sd/-

Under Secretary, Finance”

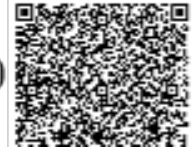


5. A rejoinder has been filed by the petitioner wherein it has been submitted that although the letter, (Annexure P-12), written to the bank has been withdrawn but the claim of the petitioners still subsists and the respondents have reserved the right to claim liquidated damages. It has been further submitted that during the pendency of the petition, petitioner has sent another notice dated 12.05.2023, (Annexure P-14), invoking the arbitration clause *qua* some disputes, which have arisen subsequently.

6. I have heard learned counsel for the parties and considered their respective submission, besides examining the documents placed on the record.

7. There is no dispute regarding the agreement between the parties, the arbitration clause and notice invoking the arbitration clause are admitted. Some disputes were referred to an Arbitral Tribunal, which culminated in an award, (Annexure P-4). From the narration of the facts given by the petitioner, it is evident that he has exhausted the pre-reference mechanism before invoking the arbitration clause. The dispute between the parties persists and deserves to be referred to an Arbitral Tribunal, comprising of three members, as provided in Clause 19.2 of the Concession Agreement (Annexure P-3).

8. As the State Counsel does not have any instructions to give consent to the name of arbitrator proposed by the petitioner in its notice, (Annexure P-13), this Court nominates Mr. Justice (Retd.) K.S. Garewal, resident of 1065/1, Sector 39-B, Chandigarh-160036, Mobile No.



9876002909 and Mr. Justice (Retd.) Mahavir S. Chauhan, resident of #145, Near Jalvayu Towers, New Sunny Enclave, Sector 123, SAS Nagar (Mohali) Punjab, Mobile Nos. 085588-09908 and 094636-00606, former judges of this Court, as arbitrators on behalf of the parties. Both the arbitrators are requested to appoint the third arbitrator, who shall be the chairman of the Arbitral Tribunal, as per Arbitration Clause 19.2 and to adjudicate the dispute between the parties, subject to compliance of statutory provisions.

9. Parties are directed to appear before the learned Arbitrators on date, time and place to be fixed and communicated by the learned Arbitrators at their convenience.

10. Parties will be at liberty to raise all claims, counter claims, defences, pleas etc., including that of limitation, before the learned Arbitrators.

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

12. A request letter(s) alongwith a copy of the order be sent to Mr. Justice (Retd.) K.S. Garewal and Mr. Justice (Retd.) Mahavir S. Chauhan.

(SUVIR SEHGAL)
JUDGE

24.10.2024

Jyoti Thakur

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No