

ARB-72-2023

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

228

ARB-72-2023

Date of decision: 18.11.2024

M/S SPC-GCC (JV)

...PETITIONER

VS.

CHIEF ENGINEER (NH), PUNJAB AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

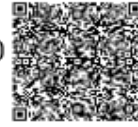
Present: Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel,
for the respondents-UOI.

SUVIR SEHGAL J. (ORAL)

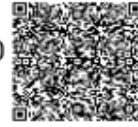
1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short 'the Arbitration Act'), for constitution of an independent and impartial tribunal to adjudicate the dispute between the parties.

2. Counsel for the petitioner submits that a bid was given by the petitioner to a tender, Annexure P-1, floated by the respondents. The bid was accepted and a letter dated 17.06.2016, Annexure P-2, was issued to the petitioner allotting the work of widening of two lane with paved shoulder and strengthening of a section of Barnala-Mansa-Sardulgarh-Sirsa road (for short "the work"). Counsel submits that Clause 26 of the

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terms and conditions of the tender document, which is a part of the agreement executed between the parties, contains a provision for resolution of disputes through the medium of conciliation and arbitration. By referring to communications, Annexures P-4 to P-9, counsel for the petitioner submits that some differences arose between the parties and by communication dated 18.08.2022, Annexure P-10, petitioner called upon the respondents to appoint a Conciliator in terms of the arbitration clause, but by their response dated 15.09.2022, Annexure P-11, respondents informed that no claims/damages are payable on account of extension of time. Counsel submits that the petitioner followed up the matter by sending another communication dated 21.09.2022, Annexure P-12, which was followed by a legal notice dated 10.10.2022, Annexure P-13, whereby the petitioner invoked the arbitration clause. Counsel asserts that despite sending a reminder, Annexure P-14, Arbitrator was not appointed.

3. Upon notice by this Court, petition has been contested by the respondents by filing a response, wherein it has been submitted that by letter dated 12.01.2023, Annexure R-2, petitioner was called for a meeting in the office of the Executive Engineer to deliberate upon the various issues in order to find an amicable settlement to the disputes. This was followed by another letter dated 01.02.2023, Annexure R-3, but the petitioner never participated in the conciliation process. An objection has been raised by the respondents that the petitioner has failed to exhaust the pre-reference mechanism.

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4. I have heard counsel for the parties and considered their rival submissions besides examining the documents placed on the record.

5. From the documents appended with the paper-book, it is apparent that the petitioner had served a notice dated 18.08.2022, Annexure P-10, under Clause 26.2 for appointment of a Conciliator, which was rejected by the respondents by their response, Annexure P-11. Another notice, Annexure P-12, was served by the petitioner, however, it was only after the petitioner invoked the arbitration clause by serving a legal notice dated 10.10.2022, Annexure P-13, that the respondents chose to call the petitioner for conciliation. This Court is, therefore, satisfied that the petitioner had exhausted the pre-reference mechanism as provided in Clause 26.1 and 26.2 of the contract agreement. It is evident that a dispute persists between the parties, which deserves to be referred to an Arbitrator for adjudication. This Court, therefore, has no hesitation in acceding to the prayer made in the petition.

6. Accordingly, petition is allowed. Mr. Justice (Retd.) Rakesh Kumar Garg, a former judge of this Court, H. No. 417, Sector 35-A, Chandigarh, Mobile No.09780008133, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

7. Parties are directed to appear before the learned Arbitrator on 16.12.2024 or on any day, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

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

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

10. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) Rakesh Kumar Garg.

18.11.2024*sheetal***(SUVIR SEHGAL)
JUDGE**

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