

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

304

ARB-525-2023

Date of decision:03.04.2024

M/S IGEN SOLUTIONS

...PETITIONER

VS.

CHANDIGARH TRANSPORT UNDERTAKING ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Mehak Sood, Advocate and
Mr. Rajesh Sood, Advocate for the petitioner.

Mr. Mohinder Singh Nain, Additional Standing Counsel &
Mr. Ankit Midha, Junior Panel Counsel, for the respondent.

SUVIR SEHGAL J. (ORAL)

1. Instant application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, for appointment of an independent Arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that a contract dated 25.08.2020, Annexure A-1, was entered into between the parties and Clause 12 thereof contains an arbitration clause. She submits that the petitioner was to install boom barriers and CCTV cameras at some of the depots of the respondent and the value of the contract was Rs.35,34,000/- to be completed in five years. She submits that some additional work was allotted to the petitioner, which was beyond the terms of the contract. However, no payment was made to the petitioner

and rather a show cause notice was issued. Although, the petitioner submitted a reply, but the contract was terminated vide order dated 16.02.2023, Annexure A-8, and the performance security deposited by the petitioner was forfeited. She submits that as a dispute arose between the parties, petitioner served a notice dated 11.08.2023, Annexure A-10, invoking the arbitration clause. She asserts that no reply has been received.

3. Upon notice, respondent has filed a reply, which is taken on record, opposing the prayer made in the petition, wherein it has been *inter alia* submitted that a penalty of Rs.30,78,000/- has been imposed upon the petitioner, besides terminating the contract and forfeiting the performance security. The objection taken in the reply is that as per the terms of the arbitration clause, the Secretary Transport, Chandigarh, is to be appointed as a sole Arbitrator.

4. I have heard counsel for the parties and considered their respective submissions.

5. The objection raised by the respondent deserves to be noticed and rejected for the reasons that the Secretary, Department of Transport, Chandigarh, is interested in the outcome of arbitration proceedings. Moreover, as has been laid down in the amended provision of Section 12 (5) of the Act, Secretary, Transport, is ineligible to be appointed as an Arbitrator. Reference can also be made to the judgment of the Supreme Court in **Perkins Eastman Architects DPC & Another Versus HSCC (India) Ltd. 2020 (20) SCC 760.**

6. For the reason afore-going, prayer made in the petition is accepted.

7. Petition is allowed. Sh. Suresh Kumar Monga, Former Member (Judicial), # 0901, N-Block, Wellington Heights, TDI City, Sector 117, Mohali, Mobile No.9814106356, is appointed as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute between the parties.
8. Parties are directed to appear before the learned Arbitrator on 08.05.2024 or on any day, time and place to be fixed and communicated by the learned Arbitrator at his convenience.
9. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.
10. The arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
11. Copy of the order be sent to the learned arbitrator.
12. Pending application(s), if any, shall stand disposed of.

03.04.2024

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

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