

(2013) 11 P&H CK 0196
In the Punjab And Haryana At Chandigarh
Case No : ARB-98-2013

Kartar Singh Contractor

APPELLANT

Vs

Haryana State Industrial Infrastructure Development
Corporation Limited and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0196

Hon'ble Judges : Sanjay Kishan Kaul, C.J

Bench : Single Bench

Advocate : Sachin Mittal, for the Appellant; Rajvir Singh Sihag, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The present petition has been filed u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) for appointment of an arbitrator to resolve the disputes arising out of an agreement dated 28.05.2009 signed inter se the parties. The agreement contains arbitration clause 25. The execution of the agreement, the existence of the arbitration clause and the disputes having arisen inter se the parties is not disputed by learned counsel for the respondents. The only issue urged by learned counsel for the respondents is that the arbitration clause envisaged an endeavour to be made first for settlement of disputes by approaching SM/AGM/DGM (IA) of the respondents failing which recourse has to be had to arbitration, the designated authority being the Managing Director of the respondents. It is the say of learned counsel for the respondents that the petitioner never invoked the settlement mechanism and straightway invoked the arbitration clause and, thus, it is not that there is a failure on the part of the designated authority in appointing an arbitrator to resolve the disputes inter se the parties.

2. It is not disputed that a legal notice dated 28.10.2010 was served by the petitioner on the respondents through counsel. This legal notice refers to the

petitioner raising a final bill on 16.11.2009 and part amount being paid. The balance amount of Rs. 37,96,886/- is stated to have been left. A demand has been raised for the said amount failing which the petitioner would invoke the arbitration clause. Thereafter, by making reference to clause 25A(1), it has been stated that the process of arbitration should be adopted for resolution of disputes. This notice was undisputedly received by the respondents who sent a reply dated 25.11.2010 disputing the liability. It is alleged that the work was abandoned in between and the petitioner was called upon to complete the work whereafter the claims would be examined.

3. In my considered view, the legal notice sent by the petitioner has to be treated as a communication to either resolve the dispute or make the payment failing which the arbitrator ought to be appointed. This letter was ignored at the highest level by the respondents including the designated authority by neither making an endeavour to resolve the dispute nor to make the payment as it is their categorical stand that no amount is due. If that is their stand, then the designated authority ought to have appointed the arbitrator, but this has not been done even as of now much after filing of the present petition.

4. I am, thus, of the view that the failure of the designated authority to appoint an arbitrator has given cause of action to file the present petition and the dispute inter se the parties is liable to be referred to arbitration. The venue of the arbitration is stated to be at Gurgaon and, thus, Mr. S.S. Singh Dahiya, District and Sessions Judge (Retired), H. No. 133-D, Civil Lines, Opposite Working Women Hostel (Haryana) is appointed as the sole arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

5. The fee of the arbitrator shall be as per the Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011.

6. The petition accordingly stands allowed leaving the parties to bear their own costs. A copy of the order be sent to the arbitrator.