



2025:HHC:17290

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**Arb. Case No777 of 2024****Decided on: 30.05.2025**

M/s Devinder Sharma

.....Petitioner

Versus

Engineer-in-Chief (OP) South, H.P. and Ors. ...Respondents

*Coram****Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.****Whether approved for reporting?¹*For the petitioner: Mr. Ajay Kumar Lahota,
Advocate.

For the respondents: Ms. Vandana Misra, Advocate

G.S. Sandhawalia, Chief Justice (Oral)

The present petition has been filed for appointment of the Arbitrator under Section 11(6) of Arbitration and Conciliation Act, 1996, by the petitioner-contractor.

2. The Arbitration Agreement contains Clause 26.3 which is for settlement of dispute by way of arbitration.

3. On 20.09.2018, the petitioner was awarded the Work of "Site Development and construction of retaining Wall for proposed 22kv Controlling point at Kansakoti under ESD,



HPSEBL, at Rohru Division, Shimla, H.P.” the cost of the awarded work was estimated to be Rs.23,78,558/-.

4. The case of the petitioner-applicant is that there was deviation of Rs.9,87,190/- which was 41.50% of the actual awarded tender amount and same had been sent for approval to the office of respondent No.1. The petitioner having not been compensated, served the requisite notice upon the respondent dated 17.05.2024 for the appointment of an Arbitrator but neither the respondents responded to the notice nor appointed an arbitrator. .

5. The reply to the petition filed by the respondents would go on to show that that there was “No Deviation Certificate” prior to the award of work dated 23.08.2018 (Annexure R-1), rendering any claim for deviation non-arbitrable.

6. The petitioner contests that there was deviation required. The replication filed to the reply as such is on record which would go on to show that the Certificate executed was only concerning specific clauses of the Contract and deviation with regard to increase the cost of work during the execution



of work was not included and claim of deviation was arbitrable and therefore appointment of the Arbitrator as such was sought.

7. Keeping in view the fact that the parties have agreed as such, for the dispute *inter se* the parties, being settled by way of arbitration, this Court is of the opinion that there is tender agreement executed *inter se* the parties. Therefore, it is for the Arbitrator to go into the factual matrix on the merits of the issue, as such, regarding the issue of deviation.

8. Accordingly, the present petition is allowed and Mr. Sanjeev Kumar Sharma, Engineer-in-Chief (Mob. No.9418083101), is appointed as an Arbitrator to adjudicate the dispute between the parties, since the matter is technical in nature and it would be appropriate for an Engineer to go into this aspect. His appointment as an Arbitrator shall come into force only after his disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, his appointment, as an Arbitrator, shall come into force.



9. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Mr. Sanjeev Kumar Sharma, Engineer-in-Chief, shall enter into reference, and shall pass an award in accordance with law.

10. Copy of this order be furnished to the learned counsel for the parties and also be furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

May 30, 2025

(ankit)

(G.S. Sandhawalia)
Chief Justice