

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

ARB-191-2014 (O&M)

Date of decision:- 08.05.2015

Shalimar Estates Pvt. Ltd.

...Petitioner

Versus

Punjab Small Industries & Export Corpn. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Sudhir Mittal, Advocate,
for the petitioner.

Mr. Indresh Goyal, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The parties had entered into an agreement dated 20.12.2005 by which the respondent allotted a plot of land in favour of the petitioner for a consideration of ₹ 30 crores and on the other terms and conditions contained therein. Clause 36 of the agreement reads as under:-

“36. That all disputes and differences arising out or in any way touching or concerning this allotment whatsoever shall be referred to the sole arbitration of the Managing Director of Corporation or any other officer appointed by him. There will not be any objection to such an appointment that the arbitrator so appointed is a Govt. servant or an officer of the Corporation and the decision of the arbitrator shall be final and binding on the parties concerned.”

3. Admittedly, there are disputes and differences between the parties. The respondent contends that the petitioner had failed to pay the consideration.

4. The petitioner, on the other hand, contends that there were several defaults on the part of the respondent including failure to provide the infrastructure.

5. The respondent by a letter dated 02.09.2014 terminated the agreement. By a letter dated 16.09.2014, the petitioner raised various issues and invoked the arbitration clause. The petitioner, however, stated that as the Managing Director of the respondent had himself cancelled the agreement and which cancellation has been challenged, it would not be fair for him to adjudicate the disputes and differences between the parties. It was further stated that for this reason it was not appropriate for him to nominate an arbitrator. The respondent was called upon to appoint an independent arbitrator. The names of three learned retired Judges of this Court were suggested. There was no response from the respondents to the demand for arbitration. They had not even appointed the arbitrator in accordance with the said clause 36. They have, therefore, forfeited their right to appoint the arbitrator.

6. In these circumstances, Mr. Justice R.S. Mongia, former Chief Justice of the Assam High Court is appointed as the sole arbitrator to adjudicate upon the disputes and differences between the parties. The arbitrator shall fix his own fee.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

08.05.2015

Amodh