

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-220-2014(O&M)

Date of Decision:07.08.2015

SAWERA

.....Petitioner

Versus

**Project Director, Haryana State
AIDS Control Society and another**

.....Respondents

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

**Present: Mr.Abhinav Oberoi, Advocate,
for the petitioner.**

None for the respondents.

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

This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an independent person as Arbitrator.

The petitioner asserts that a contract dated 28.03.2011 was entered into with the respondents. The respondents have denied the agreement. The petitioner has annexed the agreement as Annexure P/2. According to the petitioner, the respondents have the original copy of this agreement and he(petitioner) was only given a copy thereof. By an order dated 03.07.2015, respondent No.1 was directed to produce the original agreement by the next date. The respondents were put to notice that in the event of their failure to produce the original agreement on the next date, the Court may

proceed on the basis that Annexure-2 is a valid agreement. On the next date of hearing i.e. on 24.07.2015, the respondents were absent. However, last opportunity was given to them to appear and to comply with the order dated 03.07.2015. The respondents are absent even today.

The petitioner filed a letter dated 25.01.2012. Due to the disputes and differences between the parties, the petitioner invoked the Arbitration Clause namely Clause 15. The relevant portion of Clause 15 reads as under:-

“15.3 Should either party have cause to disagree with the decision of the GRC, the matter in dispute shall be referred to a panel of 3 Arbitrators of which one Arbitrator shall be nominated by the GRANTEE, one by the GRANTOR and the third Arbitrator shall be chosen by the two Arbitrators and will act as the presiding arbitrator of the tribunal. The decision of the Arbitrators will be on the basis of a simple majority (i.e. at least 2 of the 3 Arbitrators should be in favour of any decision). The decision of the panel of Arbitrators shall be final and binding on both the parties. The Arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

15.4 The place of arbitration shall be the city where GRANTOR is located.

15.5. All disputes arising between the parties shall be subjected to the jurisdiction of the Courts in the city where GRANTOR is located only and in no other courts.”

By a letter dated 25.07.2013, the petitioner raised various disputes and invoked the arbitration agreement. Respondent No.1 by a letter dated 15.10.2013 alleged that no contract was entered into but in spite of the same, it had considered settling the disputes as per Clause 15 of the terms & conditions of the agreement

provided by NACO-applicant in mutual consultation.

The petitioner by a legal notice dated 25.07.2013 had nominated an Arbitrator. Respondent No.1 has, however, failed to appoint any Arbitrator. Respondent No.1 is, therefore, directed to appoint its Arbitrator in accordance with Clause 15 of the agreement by 15th September, 2015, failing which, it will be open to the applicants to make an application in this application itself for having an Arbitrator named by the Court. However, in case, an Arbitrator is appointed by respondent No.1 by the date aforesaid, two arbitrators shall appoint the Presiding Arbitrator.

The petition is accordingly disposed of.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

August 07, 2015
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