

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

ARB-223-2014 (O&M)

Date of decision:- 08.05.2015

M/s S.P. Developers & Decorators

...Petitioner

Versus

Northern Railways and others

...Respondents

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

Present: Mr. Vishal Gupta, Advocate,
for the petitioner.

Mr. Karminder Singh, Advocate,
for the respondents.

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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 18.06.2013.

Clause 64.(3) thereof reads as under:-

“64.(3) Appointment of Arbitrator:

64.(3) (a)(i) – In cases where the total value of all claims in question added together does not exceed Rs. 10,00,000/- (Rupees ten lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

64.(3) (a)(ii) – In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway

Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator."

The case falls under clause 64.(3)(a)(ii).

3. By a letter dated 06.09.2013, the respondents terminated the agreement. The disputes and differences arose between the parties. By a letter dated 29.05.2014, the petitioner invoked the arbitration clause. The respondents by their letter dated 21.08.2014 forwarded a panel of four names as required by the said clause. The petitioner by a letter dated 28.08.2014 suggested two names from the list furnished by the respondents. Despite the same, the respondents failed to constitute the Arbitral Tribunal. The respondents have, therefore, forfeited their right to appoint the arbitrator. I, however, intend constituting the Tribunal including the two persons suggested by the respondents and by the petitioner on the arbitral panel.

4. The petition is disposed of by constituting the Arbitral Tribunal comprising of Sh. Vijay Pratap Singh, CE/C/Survey, Northern Railway, K. Gate, Delhi and Ms. S. Bandopadhyay, CSTE/Plg, Northern Railway, Baroda House, New Delhi. In addition thereto, Mr. B.R. Gupta, retired Additional District & Sessions Judge, residing at H. No. 587, Sector 8 B, Chandigarh is appointed as the presiding arbitrator.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

08.05.2015
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