

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

ARB-28-2015 (O&M)

Date of decision:- 15.05.2015

M/s G.S. Agro Industries, Ambala City

...Applicant

Versus

Director General, Food & Supplies, Haryana and another

...Respondents

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

Present: Mr. S.K. Yadav, Advocate,
for the applicant.

Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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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 appointment of the arbitrator.

2. There is an arbitration clause contained in the agreement. It is, however, contended that the applicant's right to claim arbitration is barred in view of the proviso to clause 23. Clause 23 reads as under:-

“23. All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the Director Food and Supplies, Haryana/Managing Director of the Agency or any person appointed by them in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department, Haryana/agency and he had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on both the parties of this contract. It is a term of this contract that in the event of transfer, vacation of office or being unable to act for any reason of a person appointed as an arbitrator by the Director Food and Supplies,

Haryana/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as an arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor.

Provided that any demand for arbitration in respect of any claim(s) of the Miller Second party under the contract shall be in writing and made one year of the date of completion or expiry of the period of contract. If the demand is not made within the period, the claim(s) of the Miller/Second Party shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claim. The cost for and in connection with arbitration shall be the discretion of the arbitrator who may make suitable orders in his award.

Subject as aforesaid, the Arbitration and Conciliation Act, 1996, shall apply to the arbitration provided under this clause. However, this will not debar First Party from initiating civil and criminal proceedings against the Second Party as well as against the sureties.”

3. It is contended that the arbitration clause had not been invoked within one year of the date of completion of the contract. However, the proviso states that there should be a demand for arbitration made within one year of the date of completion ‘or expiry of the period of contract’. The period of contract is referred to in clause 19 the opening part whereof reads as under:-

“19. This agreement shall remain in force upto _____ or clearance of dues whichever is later. Thereafter, it may be extended at the discretion of the First Party/Agency.”

4. The original agreement is with the respondents. It would in any event make no difference for the agreement is considered to be in force even upto clearance of dues. The clause is not very clear. It is not clarified as to

whether the dues are as what the contractors claim to be due or as what the respondents claim to be due to the contractors. The dues have obviously not been ascertained as yet. The proviso to clause 23, therefore, is not really workable and even if it is workable in the facts of the present case it would make no difference.

5. In these circumstances, the application is disposed of by directing the Managing Director of the respondent to either act as the arbitrator or to appoint any person as an arbitrator in accordance with clause 23 of the agreement. The same shall be done in writing and communicated to the applicant latest by 30.06.2015 and thereafter all the disputes and differences shall stand referred to the said arbitrator. Needless to clarify that all the issues including limitation are kept open to be decided by the arbitrator.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

15.05.2015
Amodh