

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Arbitration Case No. 30 of 2015 (O&M)
Date of Decision: 6th November, 2015**

National Collateral Management Services Ltd.

...Petitioner

Versus

Haryana State Coop. Supply & Marketing Fed. Ltd.

....Respondent

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Rakesh Gupta, Advocate, with
Mr. A.K.Bansal, Advocate, for the petitioner.
Mr. Vishal Garg, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an application under Section 11 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties had entered into a Stock Management Agreement.

Clause 11 thereof reads as under:-

“11. In case of any disputes/differences arising out of any manner, the same shall be referred to the sole arbitration of M.D. Hafed or his authorized representative and there will be no objection that the person so authorized is/was the employee of the HAFED. The decision of MD Hafed/Authorized person shall be final and binding on both the parties.”

3. Disputes and differences arose between the parties. By a letter dated 15.12.2014, the petitioner referred to the disputes and invoked the

arbitration agreement. The petitioner also stated that the Managing Director of the respondent is on its Board of Directors and that there would be a conflict of interest. The petitioner accordingly stated that the Managing Director or his authorized representative would not be in a position to adjudicate the disputes and differences impartially. The petitioner accordingly suggested the names of certain retired Judges to be appointed as the arbitrator and called upon the respondent to concur in their appointment.

The respondent by its letter dated 15.01.2015 informed the petitioner that in exercise of its right under the arbitration agreement, its Managing Director had appointed an arbitrator.

4. The petitioner by its letter dated 24.01.2015 requested the respondent to reconsider its decision. The respondent not having acceded to this request, the petitioner has filed the present petition for the appointment of an independent arbitrator.

5. The contention on behalf of the petitioner is well founded. I was informed that the Managing Director of the respondent is on the petitioner's Board of Directors by reason of the investment made by the respondent in the petitioner. Thus, the Managing Director of the respondent is primarily and essentially a Director of the respondent and is a member of the Board of Directors of the petitioner only on account of the transactions between the parties and by reason of his being the Managing Director of the respondent. The primary responsibility, therefore, of the respondent's Managing Director is to protect and ensure the interest of the respondent in the petitioner. He is, therefore, by no means a neutral party merely by virtue being a Director of both the companies. Although as a Director of the respondent he also occupies a fiduciary capacity qua the petitioner, his responsibility primarily and

essentially is to the respondent.

6. In these circumstances, there is likely to be a conflict of interest as far as the Managing Director is concerned. For instance, the Managing Director would be privy to the entire records of the petitioner. More important, he would be privy to the decision in respect of the present litigation between the parties. He would in any event be entitled to the same in exercise of his powers as a Director of the petitioner. In these circumstances, there can be little doubt that the Managing Director himself ought not to be an arbitrator with regard to the disputes and differences between the parties.

7. For the same reason nor would it be appropriate for the Managing Director to appoint an arbitrator. If a person is not liable to be appointed as an arbitrator on account of a conflict of interest, he cannot possibly be a fit person to nominate an arbitrator himself. A view to the contrary would be a contradiction in terms.

8. In the circumstances, the petition is disposed of by appointing Mr. Justice Ashok Bhan, a former Judge of the Supreme Court of India, as the sole Arbitrator to adjudicate upon the disputes and differences between the parties.

6th November, 2015
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE