

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.42 of 2015 (O&M)

RESERVED ON: 31.07.2015

DATE OF DECISION: 11.09.2015

Ashok Sharma & Associates Pvt. Ltd.

....Applicant/Petitioner

versus

Airports Authority of India

.....Respondent

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

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Aman Pal, Advocate for the applicant/petitioner
Mr. Anil Kathuria, Advocate for the respondent
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

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

2. The parties had entered into a Licence Agreement dated 31.12.2010, Clause-33 whereof reads as under:-

"All disputes and differences arising out of or in any way touching or concerning this agreement (except those the decision whereof is otherwise hereon before expressly provided for or to which the public premises (Eviction of unauthorized occupants) Act and the rules framed hereunder which are now enforce (*sic* in force) or which may hereafter come into force are applicable) shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member Authority. The Award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration and Conciliation Act, 1996 shall be applicable. It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any court of Law, on this account."

3. The petitioner contends that the respondent has forfeited its right to appoint a sole arbitrator as it had failed to do so within a period of 30 days of the receipt of a notice sent by the petitioner invoking the arbitration clause and till after the filing of this petition.

4. Disputes and differences having arisen between the parties, the petitioner addressed a letter dated 23.01.2015. The notice set out some of the disputes. The petitioner called upon the respondent to appoint an arbitrator in accordance with the said clause within 30 days of the receipt of the letter.

5. This petition was lodged on 04.03.2015. The respondent claims to have appointed the arbitrator on 16.02.2015. This appears to have been only an intention to appoint the arbitrator and does not appear to constitute an appointment as on that day at least. A communication of the appointment of the arbitrator was dispatched only on 09.03.2015 i.e. 5 days after the petition was lodged on 04.03.2015. The arbitrator entered upon reference on 12.03.2015. The arbitrator issued notices. The delay, therefore, was only of about 4 or 5 days.

6. Moreover, as rightly pointed out by Mr. Kathuria, the learned counsel appearing on behalf of the respondent, the letter dated 23.01.2015 invoking arbitration and calling upon the respondent to appoint the arbitrator was served upon the respondent "through its Director". There is no post of Director in the respondent. Understandably, the letter must have taken its time in reaching the Chairman/Member Authority who is to appoint the arbitrator as per the arbitration clause set out above. In that view of the matter, there would probably be no delay at all in the

appointment of the arbitrator. This is assuming that the period of 30 days is sacrosanct.

7. In the facts and circumstances of this case, even assuming that the period of 30 days is sacrosanct, it cannot be said that the respondent had forfeited its right to appoint the arbitrator. Moreover, there is nothing on record to indicate any bias or prejudice or any *mala-fides* on the part of the arbitrator appointed by the respondent.

8. In the circumstances, the application is dismissed.

11.09.2015
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(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE