

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.85 of 2015 (O&M)
DATE OF DECISION: 31.07.2015

M/s Kandhari Beverages Pvt. Ltd.

....Applicant

versus

M/s Suzlon Energy Ltd.

.....Respondent

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

Present: Mr. Hemant Bassi, Advocate for the applicant

Mr. Sumeet Goel, Advocate for the respondents

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

2. The agreement is admitted. The arbitration clause is also admitted. The matter pertains to the supply of electricity by the respondent to the petitioner. The petitioner's grievance is that the respondent did not supply the electricity as per the agreement. There was a shortfall. The petitioner, therefore, has a claim for damages under/in respect of the contract.

3. Three separate references are already pending before the learned arbitrator in respect of the earlier periods. In respect of one of the periods, the learned Judge, in an application under Section 11 of the Act, held that the claim would be barred by the provisions of Order-II, Rule-2 of the Code of Civil Procedure. The petitioner challenged this order before the Supreme Court. The Supreme Court held that the subsequent application regarding

shortfall of minimum guarantee generation of electricity was different from the earlier dispute regarding the shortfall and overruled the order of the learned Judge. The Supreme Court referred the matter to arbitration.

4. The respondent made an application for recall of the order of the Supreme Court on the ground that it was not served. The Supreme Court ultimately disposed of that application by an order dated 19.08.2013 by recalling the earlier order and leaving the question regarding Order-II, Rule-2 CPC also to be decided by the learned arbitrator.

5. In view of the above order of the Supreme Court dated 19.08.2013, which was passed in an application identical to the one before me, I dispose of this application by the following order:-

6. The disputes and differences are referred to Justice R.S. Mongia, former Chief Justice of the Guwahati High Court as a sole arbitrator to settle the disputes between the parties including the dispute that the claim is barred by the provisions of Order-II, Rule-2 CPC.

7. The application is accordingly disposed of.

31.07.2015
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(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE