

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

ARB-114-2015

Date of decision:- 29.01.2016

M/s Shiv Oil Carrier

...Petitioner

Versus

Indian Oil Corporation Limited and another

...Respondents

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

Present: Mr. Prateek Mahajan, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is a petition for the appointment of an arbitrator.

2. The parties had entered into an agreement for the transportation of the respondents' petroleum products. The agreement is admitted. Clause 16 of the agreement reads as under:-

“16. All questions, disputes and differences arising under & in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the company. If such Director, Marketing is unable or unshalling to act as the sole arbitrator, the matter shall be referred to the sole arbitration of some other officer of the company by such Director (Marketing) in his place, who is shalling to act as such sole arbitrator. It is known to the parties herein that the arbitrator appointed hereunder is an employee of the company and may be shareholder of the company. The arbitrator to whom the matter is originally referred, whether the Director (Marketing) or officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the agreement and such person shall

be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this agreement that no person other than the Director (Marketing) or the person designated by Director (Marketing) as aforesaid shall act as arbitrator. The award of the arbitrator so appointed shall be final, conclusive and binding on all the parties to the agreement and provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be Patna.”

3. The disputes and differences arose between the parties. The respondents suspended the operation of the petitioner's fleet of trucks on 27.03.2015 and thereafter terminated the contract on 03.06.2015. The respondents also blacklisted the petitioner. The petitioner now seeks damages. The petitioner by a letter dated 08.06.2015 invoked the arbitration clause. The petitioner called upon the respondents to appoint an arbitrator. The respondents admittedly did not do so. The petition was filed on 14.07.2015. Even thereafter, the respondents did not appoint an arbitrator.

4. The petitioner contends that the respondents have forfeited their right to appoint an arbitrator.

5. The respondents on the other hand contend that the arbitrator is already named.

6. The matter is covered by the judgement of the Supreme Court in the case of *M/s Deep Trading Company Vs M/s Indian Oil Corporation and others*, 2013(4) SCC 35. Clause 29 of the agreement in that case is identical to clause 16 of the agreement in the present case. The Supreme Court held as under:-

“19. If we apply the legal position expounded by this Court in Datar Switchgears [Datar Switchgears Ltd. v. Tata Finance Ltd., (2000) 8 SCC 151] to the admitted facts, it will be seen that the Corporation has forfeited its right to appoint the arbitrator. It is so for the reason that on 9-8-2004, the dealer called upon the Corporation to appoint the arbitrator in accordance with the terms of Clause 29 of the agreement but that was not done till the dealer had made application under Section 11(6) to the Chief Justice of the Allahabad High Court for appointment of the arbitrator. The appointment was made by the Corporation only during the pendency of the proceedings under Section 11(6). Such appointment by the Corporation after forfeiture of its right is of no consequence and has not disentitled the dealer to seek appointment of the arbitrator by the Chief Justice under Section 11(6). We answer the above questions accordingly.

20. Section 11(8) does not help the Corporation at all in the fact situation. Firstly, there is no qualification for the arbitrator prescribed in the agreement. Secondly, to secure the appointment of an independent and impartial arbitrator, it is rather necessary that someone other than an officer of the Corporation is appointed as arbitrator once the Corporation has forfeited its right to appoint the arbitrator under Clause 29 of the agreement.”

7. It is clear, therefore, that the nature of the arbitration clause does not prevent the appointment of an independent arbitrator in the event of the respondents not having appointed an arbitrator for an unduly long period of time. In other words, the ratio of the judgement of the Supreme Court in *Datar Switchgears Ltd. Vs Tata Finance Ltd. and another*, 2000(8) SCC 151 would apply to a clause of this nature.

8. Apart from the judgement of the Supreme Court in *M/s Deep Trading Company* (supra), in my view, the ratio in *Datar Switchgears Ltd.* (supra) must apply in respect of the present arbitration clause. It is not

necessary that the arbitrator named by designation in the clause is the only person who can act as an arbitrator. Clause 16 of the agreement states that the disputes shall be referred to the sole arbitration of “the Director (Marketing). It, however, further provides that if the Director (Marketing) is unable or unshalling (sic) unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration of some other officer of the Company who is shalling (sic) willing to act as such sole arbitrator. In other words, it was necessary for the respondents to appoint the arbitrator. The respondents having failed to appoint the arbitrator have forfeited their right to do so.

9. In these circumstances, the petition is disposed of by appointing Mr. Justice S.S. Sodhi, former Chief Justice of the Allahabad High Court, as the sole arbitrator.

10. The arbitration proceedings shall be held at the Chandigarh Arbitration Centre.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.01.2016
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