

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

**FAO No.244 of 2016 (O&M)
Date of decision:18.01.2016**

M/s Agros Impex (I) Pvt. Ltd. & others ... Appellants

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Anil Aggarwalla, Advocate and
Mr. Kailash Chander, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellants are aggrieved of the impugned order dated 20.11.2015, whereby, the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), has been dismissed.

Mr. Anil Aggarwalla, learned counsel for the appellants assisted by Mr. Kailash Chander, Advocate submits that against the alleged Concessionaire Agreement dated 21.11.2011 entered into between the appellants and respondent No.2, the appellants have been given contract for the entire work for affixation of High Security Registration Plates, against illegal

termination of contract, the appellants filed CWP No.911 of 2015. This Court, vide order dated 21.01.2015 granted interim stay *vis-a-vis* payment of the bank guarantee with certain conditions. The aforementioned writ petition has been disposed of vide order dated 09.07.2015 relegating the parties to resolve the dispute by way of arbitration as the agreement contains arbitration clause. He further submits that impugned letter terminating the agreement also envisaged black listing of the appellants, in essence, the black listing would prevent the contractor to participate in further contract. The aforementioned black listing, has also been challenged vide CWP No.17768 of 2015 which is pending adjudication. After disposal of the writ petition, bearing No.911 of 2015, an application dated 31.08.2015 under Section 9 of 1996 Act was filed, but the same has erroneously been dismissed. He further submits that Arbitration Act governs party to file the claim as per the Rules of Arbitration and Conciliation framed by the India's Apex Arbitral Institution, namely, Indian Council of Arbitration (ICA). The statement of claim dated 30.09.2015 along with name of nominated Arbitrator, much less, arbitration fees as per requirement of rules has been complied with. The respondents despite having been given three opportunities, in essence, they have taken more than 90 days in not filing reply to the claim. The

claim petition is also accompanied by an application under Section 17 of 1996 Act, seeking restraint order for not calling upon the fresh tenders. However, rules provides that until and unless, pleadings are not complete, panel of Arbitrator cannot be constituted. Such predicament of appellant-contractor has not been appreciated by the Principal Court while declining the application filed under Section 9 of 1996 Act. In these circumstances, the present appeal has been filed.

I have heard learned counsel for the appellants and appraised the paper book, and as well as, ICA Rules of Arbitration as amended, whereby, Rule 21 provides the constitution of the Arbitral Tribunal. During the course of arguments, reference to the letter dated 05.01.2016 stated to have been sent by Indian Council, to the State of Punjab and the State Transport Commissioner has been made which, prima facie, shows that the lackadaisical attitude being adopted by the respondents in not filing the reply, much less, non- payment of arbitration fees, I am of the view that aggrieved party cannot remain remediless, in case, the respondents choose not to comply with the rules, aforementioned, particularly, when interim relief has been sought.

Keeping in view the aforementioned facts, I deem it appropriate to issue appropriate directions to Indian Council of

Arbitration to constitute the panel of Arbitral Tribunal, in case, the respondents do not choose to file the reply within a period prescribed in the rules and pay the arbitration fees. On receipt of the balance arbitration fees, the Arbitrator shall decide the application purported to have been filed under Section 17 of 1996 Act, as expeditiously as possible preferably within a period of two weeks from the date of receipt of certified copy of this order.

With the aforementioned observations, I do not intend to differ with the findings rendered by the Principal Court while declining the interim relief as aforementioned events noticed above surfaced.

The appeal stands disposed of.

A photocopy of this order be given dasti to the learned counsel for the appellants under the signatures of Reader attached to this Court.

(AMIT RAWAL)
JUDGE

January 18, 2016
savita