

F.A.O.No.3971 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O.No.3971 of 2016 (O&M)

Date of Decision: July 29, 2016

Hindustan Petroleum Corporation Limited, Bhatinda & another

...Appellants

Versus

**M/s Shree Gurdev Transport Company, Zira Road, Talwandi Bhai,
District Ferozepur**

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Raman Sharma, Advocate,
for the appellant.**

**Mr.Vinod Khunger, Advocate,
for the caveator-respondent.**

AMIT RAWAL, J. (Oral)

The appellants are aggrieved of the impugned order, whereby in a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"), in pursuance to the agreement dated 31.12.2012 arrived at between the parties, an interim order for restoration of the supply has been passed.

Mr.Raman Sharma, learned counsel for the appellants submits that after the passing of the interim order, the agreement has also been challenged. The respondent-transporter committed some defaults of the terms and conditions of the agreement and as a result thereof, a show

cause notice was issued. The said notice has yet not culminated into any order and, therefore, there was no occasion for filing the petition under Section 9 of 1996 Act. This aspect has not been noticed by the Principal Court while allowing the application.

On the last date of hearing, this Court had directed the parties to seek adjudication of the dispute through arbitration as the agreement contained Clause 18 for resolution of the dispute by an Arbitrator.

Mr.Sharma has also raised another argument. He says that before filing of the petition under Section 9 of 1996 Act, it is the Corporation, which had shown intention to seek the resolution of the dispute through arbitration.

Mr.Vinod Khunger, learned counsel for the caveator-respondent submits that after the passing of the order, the dealer had shown the intention for restoration of the supply and appointment of the arbitrator, but the petitioners have not passed any order. The order is most innocuous. The Principal Court had examined the question threadbare and in the petition under Section 9 of 1996 Act, it was not the show cause notice, which was challenged but the stoppage of the supply also and in this context, interim order has been passed by the Court, therefore, there is no substance in the plea of Mr.Sharma that it is only

qua challenge of the show cause notice and, thus, urges this Court for affirming the findings by stating that he will send a notice seeking the intention of resolution of dispute through arbitration.

Mr.Sharma also submits that the Corporation shall not have any difficulty for appointment of arbitrator strictly as per provisions of Section 18 of 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book.

Since the parties are ad idem for resolution of the dispute by appointing arbitrator and interim order is only valid till the matter is referred to the arbitrator, I deem it appropriate to dispose of the present appeal by upholding the order under challenge by issuing direction to the respondents to send a notice of seeking intention to appoint the Arbitrator in accordance with law forthwith not later by tomorrow by registered post and as well as by personal delivery and thereafter the Corporation shall appoint an arbitrator as per the terms and conditions of the agreement.

The parties shall be at liberty to raise all the claim before the arbitrator.

July 29, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No