

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No.208 of 2016 (O&M)
Date of Decision: 10.11.2017

M/s Scon Constructions Pvt. Ltd.

.....Petitioner

versus

M/s Pavitra Milk Products Pvt. Ltd.

.....Respondent

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

Present : Ms. Astha Sharma, Advocate and
Ms. Gayatri Aryan, Advocate, for the petitioner.
None for the respondent.

S.J.VAZIFDAR, CHIEF JUSTICE

This is an application under section 11 (6) of the Arbitration and Conciliation Act, 1996 for the appointment of sole arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties had entered into an agreement dated 25.03.2014 under which the petitioner was to construct the factory and carry out other construction work on the property belonging to the respondent.

3. Ms. Astha Sharma, the learned counsel appearing on behalf of the petitioner relied upon clause 1.34 of the General Conditions of Contract which contains an arbitration agreement which reads as under:-

“All disputes between the parties to the contract shall, after written notice by either party to the contract, to the other of them, be referred to arbitration to sole arbitrator to be appointed by the M/s Pavitra Milk Product Pvt. Ltd. at plot No. H1/103, H1/104, H1/83 (Combined) and M/s Bhargava Prasad and Associates. The arbitral proceedings will be conducted under the provisions of Indian Arbitration Act, 1940 with any amendments and enactments thereof. The proceedings will be conducted at their office in Gurgaon. The jurisdiction will lie with the Courts at Gurgaon.”

3. Ms. Sharma rightly relied upon clause 22 of the agreement which incorporated inter-alia the said General Conditions of Contract. The disputes and differences having arisen between the parties, the petitioner by its Advocate notice dated 13.05.2015 invoked the arbitration agreement. The petitioner specifically called upon the respondents and the Architects mentioned in the arbitration clause to appoint the arbitrator. They, however, failed to do so and the said Architects have forfeited their right to appoint the arbitrator.

4. The petition is, therefore, disposed of by appointing Mr. Gopal Jain, Senior Counsel of the Supreme Court of India, # C-23, Gulmohar Park, New Delhi-49, as the sole arbitrator to adjudicate upon the disputes and differences between the parties.

It is apprehended that even if an award is made in favour of the petitioner, the respondents may not be able to satisfy the same in view of its adverse financial condition. The petitioner is always at liberty to request the arbitrator to fix the fees keeping the financial conditions in mind.

5. The petitioner would have no objection if the hearings are for convenience held in New Delhi but without thereby affecting the seat or place of the arbitration which is Gurgaon.

(S.J. VAZIFDAR)
CHIEF JUSTICE

10.11.2017
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√