

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

ARB-267-2016 (O&M)

Date of decision:- 05.05.2017

M/s Mehra Oil Carrier

...Petitioner(s)

Versus

Indian Oil Corporation Limited and others

...Respondents

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

Present:- Mr. Prateek Mahajan, Advocate,
for the petitioner(s).

Mr. Ashish Kapoor, Advocate,
for the respondents.

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

This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short the Act) for the appointment of an arbitrator.

2. The respondents had awarded the work of transportation of MS/HSD branded fuels from Jalandhar Terminal to various locations in Punjab, Himachal Pradesh and Jammu & Kashmir as per the work order dated 08.05.2015.

3. Clause 16 of the contract contains an arbitration agreement which reads as under:-

"Clause No. 16 Contract of Agreement
dated 31.12.2011.

16. All questions, disputes and differences arising under or 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 to person other than the Director (Marketing) or the person designated by the 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 & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the Rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be Chandigarh."

4. In view of the amendment to the Act, the officers mentioned therein cannot act as arbitrators. The petitioners' demand, therefore, for the appointment of an independent arbitrator is well founded.

5. The petitioners' claim is for damages on account of the respondents having wrongly refused to permit the petitioners to execute the contract. The respondents contend that the petitioners were not entitled to execute the contract with the vehicles sought to be utilized by the petitioners as the vehicles had been blacklisted. The vehicles belong to a third party. That third party has initiated separate arbitration proceedings in respect of the blacklisting. That

third party is a sister concern of the petitioners. An award striking down the blacklisting was passed. That award has been stayed by a Commercial Division Court. The objections under Section 34 of the Act are, however, pending before that Court.

6. The proceedings initiated by the third party and the orders passed therein would not preclude the petitioners from having their disputes adjudicated in accordance with law including by arbitration.

7. Firstly, the petitioners' case is that in any event, there was a period when there was no response to the order of blacklisting and that the respondents were, therefore, not justified in refusing to permit them to carry out the work at least during that period. In any event, the effect of the proceedings initiated by the third party, the award passed therein and the orders passed by the Courts in the proceedings relating to the challenge to the award are issues which fall within the ambit of the arbitration clause. It is always open to the respondents to contend before the arbitrator that in view of any particular order, the petitioners' claim is not maintainable and/or is liable to be rejected. The present petition, therefore, for the appointment of an arbitrator under Section 11 is maintainable.

8. In these circumstances, the petition is disposed of by appointing Mr. Justice N.K. Sodhi, former Chief Justice of Karnataka High Court, as the sole arbitrator. The venue shall be the Chandigarh Arbitration Centre.

(S.J. VAZIFDAR)

CHIEF JUSTICE

05.05.2017

Amodh

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