

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8822 of 2016

Date of Decision : 02.03.2017

K V Fire Chemicals (I) Pvt. Ltd.

...Petitioner

Versus

Indian Oil Corporation Limited and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

Mr. Adarsh Jain, Advocate for the respondents.

S.J. Vazifdar, C.J.(Oral)

1. The petitioner has challenged orders dated 18.04.2016 (Annexure P-20) and 28.04.2016 (Annexure P-22), by which the respondents have considered the petitioner's bid to be non-responsive only on the ground that the petitioner had been blacklisted in respect of another contract entered into between the petitioner and the respondents. The blacklisting was in respect of a contract dated 23.04.2010 (Annexure P-1) entered into between the parties. That agreement contained a Clause for Arbitration. Disputes and differences had been arisen between the parties. The petitioner invoked the Arbitration Clause. The respondents not having appointed an Arbitrator, the petitioner filed Arbitration Case No. 84 of 2014 for the appointment of an Arbitrator under Section 11 of Arbitration and Conciliation Act, 1996. That Arbitration petition was disposed of by an order dated 24.09.2015 (Annexure P-7) passed by one of us. It was, *inter alia*, held that issues relating to blacklisting can be

referred to Arbitration. The petition was disposed of by directing the respondents to appoint an Arbitrator in terms of and in accordance with the Arbitration Agreement. Under the Arbitration Agreement, the General Manager at the Panipat Refinery was to constitute a panel of three persons and forward the same to the petitioner and the petitioner was to select an Arbitrator therefrom. The respondents challenged the order before the Supreme Court by filing Civil Appeal No. 510 of 2016, which was disposed of by the following order :-

“O R D E R

After hearing the learned counsel for the parties for some time, the following order is passed by consent:

Leave granted.

The impugned order dated 24.09.2015 passed by the High Court of Punjab & Haryana at Chandigarh in Arbitration Case No. 84 of 2014 is set-aside. The dispute relating to the performance of the contract dated 23.4.2010 and disputes arising therefrom will be decided by Mr. Justice Mukul Mudgal, former Chief Justice of the High Court of Punjab & Haryana, as a sole Arbitrator. The Arbitrator shall proceed and decide the same under Arbitration & Conciliation Act, 1996.

The appeal is accordingly disposed of.

A copy of the order be sent to Mr. Justice Mukul Mudgal, the learned Sole Arbitrator.”

2. The order was passed by consent. It is clear from the order that the order in the Arbitration petition under Section 11 of Arbitration and Conciliation Act, 1996 was set-aside only to the extent that it related to the manner in which the Arbitrator was directed to be appointed. That the matter could be referred to the Arbitration, is clear from the said fact that the Supreme Court itself appointed the Arbitrator in the matter. Further an application for

clarification of the order was rejected by an order of the Supreme Court dated 12.07.2016 in I.A. No. 2 of 2016. The Supreme Court held that there was no reason to re-consider its order dated 22.01.2016. We are informed that I.A. No. 2 of 2016 was filed, *inter alia*, on the contention that the issue of blacklisting had not been referred to Arbitration. It is, therefore, clear that all the issues stood referred to Arbitration. This is important in view of an order passed by the learned Arbitrator under Section 17 of the Arbitration Act. The learned Arbitrator in paragraph 13 of the order expressly stayed the blacklisting/holiday listing order dated 01.03.2016 during the pendency of the Arbitral proceeding. In view thereof, it was not permissible for the respondents to consider the petitioner's bid as non-responsive on the ground that the petitioner had been blacklisted in an earlier contract.

3. The impugned orders are, therefore, quashed and set-aside. The respondents shall consider the petitioner's bid subject to the same meeting all other requirements and thereafter decide the party in whose favour the contract ought to be awarded. Needless to add that the same would be subject to any order that may be passed in respect of the order of the learned Arbitrator under Section 17 of the Arbitration Act.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

02.03.2017.
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Whether speaking/reasoned? Yes

Whether reportable? Yes