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

**Civil Revision No.8078 of 2017 (O&M)
Date of Decision:18.03.2019**

**M/S RAJINDER EARTHMOVER FILLING STATION LTD AND
ANR**

.....Petitioners

Vs

**A2Z WASTE MANAGEMENT LUDHIANA LTD AND ORS
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.P. Soi, Advocate
for the petitioners.

Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate
for respondent No.1.

Service qua respondents No.3, 4, 7 & 8 already
dispensed with.

None for respondent No.6.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have challenged the order dated 31.07.2017 passed by the Commercial Dispute Tribunal, Ludhiana vide which the application filed by the defendant No.1 under Section 8 of the Arbitration and Conciliation Act, 1996 was allowed.

[2]. Perusal of the impugned order would show that while allowing the application the Court has observed that the suit of

the plaintiffs at this stage is dismissed with a direction to the parties to seek reference before the Arbitrator by invoking clause No.10.1 of the agreement dated 25.05.2013.

[3]. The agreement dated 25.05.2013 was executed between the parties. Clause 10.1 of the agreement reads as under:-

“10.1 The parties shall endeavour to settle any dispute arising out of this Agreement in a spirit of good faith and mutual understanding. Should this fail, any dispute arising out of this Agreement shall be finally settled under the Arbitration & Conciliation Act, 1996 by one or more arbitrators, appointed by A2Z's managing director. The place of arbitration shall be at Ludhiana, Punjab India. Any arbitration pursuant to this Clause shall be conducted in English language. This clause shall survive expiration or sooner determination of this Agreement.”

[4]. Perusal of the aforesaid clause would show that any dispute arising out of the aforesaid agreement would fall under the domain of Arbitrator. Apparently, defendant No.1 itself has terminated the agreement between the parties. Petitioners have already acknowledged the same by way of not seeking any reference before any Court against the said termination of agreement. Defendant No.1 has also acted upon the aforesaid termination by way of issuing cheque in favour of the petitioners

for answering the liability in terms of amount due.

[5]. The cheque on presentation was dishonoured by the Bank and a criminal complaint under Section 138 of the Negotiable Instruments Act is pending consideration before the competent Court. The civil suit for recovery filed in that context cannot be termed to be a dispute arising out of the agreement in question, rather the termination of agreement is an admitted fact between the parties.

[6]. Both the parties have acted upon the consequence of termination of agreement. Plaintiffs have accepted the termination of agreement and have filed a suit for recovery of the amount which was acknowledged by defendant No.1 by way of issuing cheque in favour of the plaintiffs.

[7]. In view of aforesaid factual position the reference of dispute before the Arbitrator in terms of Section 8 of the Act would not be an appropriate remedy as the *lis* is outside the purview of agreement in question which already stood terminated between the parties and the parties have accepted the same by way of resorting to their obligation thereafter.

[8]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 31.07.2017 passed by the Commercial Dispute Tribunal, Ludhiana. This

revision petition is allowed. Normal consequences to follow.

March 18, 2019

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No