

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-38 of 2021 (O&M)
Date of decision: 22.04.2021

Super Highway Labs Private Limited

...Petitioner

Versus

Amdocs Development Centre India LLP

...Respondent

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Amandeep Singh Talwar, Advocate
for the petitioner.

Mr. Sumit Jain, Advocate for the respondents

* * *

Harsimran Singh Sethi, J. (Oral)

CM-454-CII of 2021

Application is allowed as prayed for.

ARB-38 of 2021

The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (in short, '1996 Act') for the appointment of the Arbitrator to resolve the dispute as being raised by the petitioner.

As per the averments made in the petition, an agreement was entered into between the petitioner and the respondent on 09.04.2019 for the provisions of transportation services for a period of three years for cab as well as bus services. Learned counsel for the petitioner argues that the petitioner has executed his part of the agreement but, he has not been paid

the dues, for which, he was entitled for, under the contract.

Learned counsel for the respondent submits that no dues are payable to the petitioner and the contract has already been terminated and therefore, as of now, the prayer of the petitioner for invoking clause VI of the agreement dated 09.04.2019 for resolution of the dispute by appointing Arbitrator is liable to be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The execution of the agreement dated 09.04.2019 between the parties is not in dispute. The Clause VI of the said agreement is as under;-

“6. Dispute Resolution:

a. Any and all disputes or controversies arising out of, or in connection with, the interpretation, performance or non-performance, or termination of this Agreement or in any manner connected or touching upon it, shall, to the extent possible, be settled in the first instance by prompt and good faith negotiations between the parties. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the parties hereto, after reasonable attempts, which attempt shall continue for not less than thirty (30) days, gives thirty (30) days' notice thereof to the other party in writing stating that the attempt to settle the dispute amicably has failed. The parties agree that if a dispute or controversy cannot be resolved by mutual consent within a period as mentioned aforesaid, or where the parties are deadlocked on any decision for a period of thirty (30) days, the dispute, controversy or deadlock shall be finally settled by arbitration conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 as in effect on such date, by the Sole Arbitrator to be jointly appointed by both the parties.

b. The venue of the arbitration shall be in Gurgaon,

India, and the arbitration shall be conducted in the English language.

c. The award shall be in writing and be a reasoned award. The prevailing party shall be entitled to claim its costs and expenses (including reasonable counsel fees), and the sole arbitrator shall be eligible to award reasonable costs and expenses of the prevailing party.

d. The arbitration award shall be final, conclusive and binding on both of the parties.

e. During the pendency of any arbitration, each party shall continue to perform its obligations hereunder, and SERVICE PROVIDER shall not in any manner suspend, slow down or otherwise defer or affect the Services in any manner under this Agreement because of the pendency of such arbitration proceedings.

f. In any event, any action against Amdocs can only be brought to the applicable venue until no later than 1 year after the cause of action occurred.”

A bare perusal of the above clause VI of the agreement shows that all the disputes arising out of, or in connection with, the interpretation, performance or non-performance or even termination of the agreement is to be decided by way of an arbitration to be conducted by the sole Arbitrator, who is jointly appointed by both the parties and the venue of the arbitration has been fixed as Gurugram.

The only objection, which the respondent has taken is that the agreement has already been terminated and the petitioner has already been paid all his dues.

This factual aspect, whether the petitioner has already been paid all the amount due to him can only be decided by the Arbitrator. This Court is not required to examine whether the claim being raised by the petitioner is genuine or not while examining the appointment of Arbitrator under Section 11 of the 1996 Act. As per the Dispute Resolution Clause VI,

which has been reproduced hereinbefore, even, the termination of the agreement can be adjudicated by the sole Arbitrator.

That being so, the petitioner has made out a case for appointment of an Arbitrator to go into the claim being raised by the petitioner.

Learned counsel appearing on behalf of the parties agree that Retired Mr. Justice Ramendera Jain be appointed as an Arbitrator.

Ordered accordingly.

Let the parties appear before the learned Arbitrator on 25.05.2021. Learned Arbitrator be also sent the copy of this order for information and necessary action.

Keeping in view the above, the present petition is allowed.

April 22, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

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