

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB-469-2021

Date of Decision: 21.12.2021

M/s. Technical Associates Ltd.

..... Petitioner(s)

Versus

Haryana Vidyut Prasaran Nigam Ltd.

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Prateek Mahajan, Advocate and
Ms. Baani Chhibber Mahajan, Advocate
for the respondent.

LISA GILL, J.

Prayer in this petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short – ‘the Act’) is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out of Agreement/Purchase Order (PO) dated 27.03.2017, Annexure P-1, executed between the parties.

Petitioner is stated to be a company involved in the manufacture and supply of transformers and regularly executing contracts with the respondent for the last almost fifteen years. Purchase order no. HDP-2211/QDP-1042/Xen/Eq.(P) dated 27.03.2017 for supply of 27 - 40/50 MVA, 132/33 KV Power Transformers was issued by the respondent to the petitioner. Dispute arose between the parties on account of payment of applicable Goods and Service Tax. It is stated that notice dated 26.10.2020 (Annexure P-12) was issued by the petitioner to the respondent,

with a request for appointment of an independent person as Sole Arbitrator in accordance with Clause 24 of Schedule-D of the Purchase Order and in tune with provisions of the Arbitration and Conciliation Act, 1996. It is stated in the said notice dated 26.10.2020, that as the Managing Director of HVPNL is not qualified to act or nominate an Arbitrator under Section 12(5) read with the Seventh Schedule to the Arbitration and Conciliation Act, an independent person be appointed as Sole Arbitrator. A reminder was thereafter sent on 30.12.2020 (Annexure P-13), in reply to which, the respondent reverted with a list of three persons for whom consent was sought for being appointed as the Sole Arbitrator. Petitioner vide letter dated 22.03.2021 (Annexure P-15), sought information whether any of the proposed Arbitrators had earlier been appointed in any arbitration matter between HVPNL or any other party, to which the Department replied on 08.04.2021 (Annexure P-16), that there is no such provision whereunder the party can seek such information. Petitioner, thereafter, vide communication dated 07.06.2021 (Annexure P-17), while expressing its inability to consent to the appointment of any of the three persons suggested by the respondent, provided a list of another three alternate persons. However, respondent reverted vide memo dated 11.06.2021 (Annexure P-18) with a stout refusal while stating that the petitioner may give consent for appointment of any one of the three persons already suggested by the respondent. Accordingly, present petition was filed.

Learned counsel for the petitioner argues that present is a case wherein sole independent Arbitrator should be appointed by this Court, especially keeping in view the arbitration clause, stand of the respondent itself and the categorical judgment of the Hon'ble Supreme Court in *TRF Ltd.*

Learned counsel for the respondent, however, argues that this petition should be dismissed keeping in view the decision of the Hon'ble Supreme Court in ***Central Organization for Railway Electrification Vs. M/s. ECI-SPIC-SMO-MCML (JV) A Joint Venture Company, (2020) 14 SCC 712.***

I have heard learned counsel for the parties and have gone through the file.

Issuance of the Purchase Order in favour of the petitioner is not in dispute. Clause 24 of the terms and conditions of the contract provide for dispute resolution through arbitration and reads as under:-

“ARBITRATION

All matters, questions, disputes, differences and/or claims out of and/or concerning and/or in connection and/or in consequence or relating to the contract whether or not obligation of either of both parties under this contract be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to the sole arbitrator, to be appointed by Managing Director HVPNL or by any other authority of the Nigam authorized for this purpose by the Nigam. If after the appointment of the arbitrator, the arbitrator proceeding are held up due to any reason, the sole Arbitrator can be appointed again by M.D./Authority mentioned above. The award of the Arbitrator shall be final and binding on the parties to this contract.

The objection that the Arbitrator has to deal with the matters to which the Contract related in the course of his duties or he has expressed his views on any or all matters in dispute of difference shall not be considered as a valid-objection.

The venue of arbitrator shall be the place from which the acceptance of offer is issued or such other place as the Arbitrator in his discretion, may determine.

Subject to aforementioned provisions, the provisions of the Arbitration and Conciliation Act, 1996 the rules framed there under and any statutory modifications made thereof for the time being in force, shall be deemed to apply for the Arbitration proceedings under the clause.”

Existence of an arbitral dispute and a valid arbitral clause is not in dispute. Notice invoking arbitration was duly issued on 26.10.2020 with a reminder dated 30.12.2020. Respondent-Nigam itself came forward with the list of arbitrators, from whom the petitioner had been asked to choose, though the said communication was addressed on 01.03.2021 that is much after thirty days of issuance of notice dated 26.10.2020 and reminder dated 30.12.2020. Reliance by learned counsel for the respondent on the judgment of the Hon'ble Supreme Court in ***Central Organization's*** case (supra), which was a matter pertaining to the Railways, is of no avail, for the reason that in the said case there was a specific provision in the General Conditions of the Contract (GCC) where applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996 had been waived off and it was provided that the Arbitral Tribunal shall consist of a panel of three serving Railway officers or two serving officers and one retired officer. In the said case, the contractor was to be asked to suggest at least two names out of the panel for appointment as the contractor's nominee and the General Manager would appoint at least one out of them as the contractor's nominee. The General Manager would simultaneously appoint the balance number of arbitrators from the panel or from outside the panel. It is in this situation, that the Hon'ble Supreme Court held that the High Court was not justified in appointing an independent sole Arbitrator without resorting to the procedure for appointment of the Arbitrator as provided under Clause 64(3)(b) of the General Conditions of contract therein.

Learned counsel for the respondent in the present case is unable to point out any such mechanism, which is provided for in the instant situation. Present is clearly not a case where whatever advantage a party may derive by nominating an Arbitrator of its choice can get counter balanced by equal power with the other party.

Keeping in view the facts and circumstances as above, there is indeed no justification in declining the relief to the petitioner as claimed. Therefore, this petition is allowed and Mr. Justice (Retd.) Jasbir Singh, former Judge, Punjab and Haryana High Court, resident of House No. 839, Sector 16, Chandigarh, Mobile No.9780008106, is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time to be borne equally by the parties.

A copy of this order be dispatched to Mr. Justice (Retd.) Jasbir Singh, former Judge, Punjab and Haryana High Court, at the following address:-

House No. 839, Sector 16, Chandigarh, Mobile No.9780008106.

21.12.2021

Sunil

**(Lisa Gill)
Judge**

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