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

**ARB No.104 of 2017 (O&M)
Date of Decision: 14.10.2022**

UPENDERJIT SINGH

.....Petitioner

Vs

UNION OF INDIA AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Arvind Seth, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act (hereinafter for short 'the Act') for appointment of an Arbitrator to adjudicate the dispute arising out of contract agreement having arbitration clause No.64 of the conditions of contract agreement No.667/ASR dated 08.02.2010.

[2]. The work for providing of storage shed for staking of pay way material and fittings in the track Depot at Dhilwan was allocated to the petitioner and the contract agreement was accordingly executed on 08.02.2010. The work was to start

on 29.10.2009 and the completion of the work assignment was to be done upto 14.01.2010.

[3]. A dispute arose between the parties in respect of non-payment of dues to the petitioner for which the petitioner ultimately invoked the arbitration clause on 12.05.2016 vide postal receipt of even date. Petitioner has tentatively valued his claim to the tune of Rs.1.5 crores in respect of claims ranging from heads (A) to (J) as pleaded in the petition.

[4]. After invocation of arbitration clause, the respondents issued a letter dated 09.01.2017 on the subject of modification to clause 64 of General Conditions of Contract-2014 for implementation of Arbitration and Conciliation (Amendment Act, 2015). The respondent-Department in terms of request for appointment of Arbitrator conveyed to the petitioner for waiving of Section 12(5) of the said Act and in case of such waiver the respondent-Department showed its readiness and willingness to appoint a sole Arbitrator from the panel of Railway's Gazetted Officers.

[5]. During course of arguments, learned counsel for the petitioner submitted that plea as regards "accepted matter" on termination of agreement on 06.07.2015 is not applicable in view of readiness shown by the respondent-Department for appointment of Arbitrator on 09.01.2017. Even otherwise, the reply filed by the respondent-Department is in the context of

premature claim. If the averments made in para no.3 of the reply are read in entirety, the denial to the receipt would also fall under arbitral issue as the same has been authenticated by postal receipt having due presumption in the light of the fact that the posted matter was never received back within a period of 30 days from the date of its issuance.

[6]. On the other hand, learned counsel for the respondents with reference to **Central Organisation For Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company, 2020(14) SCC 712** submits that matter cannot be referred to the Arbitrator in view of arbitration clause.

[7]. However, learned counsel for the petitioner refutes the aforesaid arguments on the basis of reference order made by the Hon'ble Apex Court while considering the ratio of **Union of India vs. M/s Tania Constructions Limited, SLP (Civil) No.12670 of 2020** decided on 11.01.2021, in which disagreement with the view taken in **Central Organisation For Railway Electrification's** case (supra) has been expressed and the order of the High Court appointing the Arbitrator has been upheld.

[8]. Learned counsel further submits that while taking note of aforesaid reference, this Court in ARB No.88 of 2020 has passed an order dated 18.02.2021 to the effect that after

issuance of notice of invocation, no action has been taken by the respondent-Department, therefore, the respondents have forfeited their right to nominate an Arbitrator. Learned counsel further submits that after considering the ratio(s) of judgments passed in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**; and **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760**, the Court ultimately nominated an Arbitrator in the aforesaid case.

[9]. Learned counsel for the petitioner further submits that a communication dated 09.01.2017 was duly replied by the petitioner by way of showing his agreement for appointment of the Arbitrator.

[10]. Having considered the submissions made by learned counsel for the parties, I am of the view that this Court is required to refer the dispute between the parties to the Arbitrator without any in-depth examination of the dispute. The Court is required to satisfy itself that the dispute falls within the ambit of arbitration clause and all disputes are to be decided by the sole Arbitrator on merits as the same cannot be decided by this Court under Section 11(6) of the Act. The conclusion is inescapable that even after conclusion/culmination of principal agreement, the dispute remained to be decided which has

arisen in relation to the claim in respect of principal agreement which was terminated with the execution of supplementary agreement and the consequences thereof. Such dispute clearly falls under the arbitration clause which provides that in the event of any dispute or difference arising at any time between the parties in relation to the agreement, it shall be referred to a sole Arbitrator irrespective of whether the agreement is now in existence or no, the arbitration clause would survive. Reference can be made to **Everest Holding Limited vs. Shyam Kumar Shrivastava and others, (2008) 16 SCC 774** and **Reva Electric Car Company Private Limited vs. Green Mobil, (2012) 2 SCC 93.**

[11]. The dispute that has arisen between the parties clearly pertains to the subject matter of contract agreement which was a valid agreement showing an arbitration clause for settlement of dispute. The objection of the respondents as regards non-arbitral claim is of no consequence as the validity of the same (as regards the claim of the petitioner for settlement arising out of or in relation to the subject matter of the agreement) would still survive in view of ratio of **Everest Holding Limited's** case (supra). Section 16(1)(a) of the Act provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. The

plain meaning of the aforesaid clause would tend to show that even on the termination of the agreement, the arbitration clause would still survive. Even the Arbitrator can decide his/her jurisdiction in terms of Section 16 of the Act.

[12]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ K.C. Puri (Retd.) R/o # 495, Destate Foothills, New Punjab Judicial Officers House Building Co-operative Society Limited, Mullanpur Garib Das (New Chandigarh), Mohali, Mob. No.9780008132, Email: kcpuri@yahoo.co.in as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[13]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties in equal proportion.

[14]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[15]. A copy of this order be dispatched to the Arbitrator at the following address:-

HMJ K.C. Puri (Retd.)
R/o # 495, Destate Foothills, New Punjab Judicial
Officers House Building Co-operative Society Limited,
Mullanpur Garib Das (New Chandigarh), Mohali,
Mob. No.9780008132, Email: kcpuri@yahoo.co.in

[16]. Petition stands disposed of accordingly.

October 14, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No