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

**ARB No.127 of 2018 (O&M)
Date of Decision: 15.11.2022**

M/S NAGARDAS KANJI SHAH DAS

.....Petitioner

Vs

M/S HCMAV ENGG AND CONSULTANCY PVT LTD AND ORS

.....Respondents

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

Present: Mr. Rahul Rampal, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. In compliance of the order dated 21.10.2022, a report has been made by the office with reference to publication in two newspapers attached as 'X' and 'Y'. None has appeared on behalf of the respondent.

[2]. The Petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute between the parties.

[3]. The dispute between the parties has arisen out of supply of goods to the respondents and violation of terms and conditions of memorandum of understanding/order for supply in the form of IBR pipes entered into between the parties on 14.10.2013. The petitioner has pleaded that the Directors of respondent No.1 had approached the petitioner for purchase of various materials such as MS Seamless Metal Pipes and agreed to make the payments of the material purchased without any delay. The petitioner agreed to deliver the goods as per order for which a memorandum of understanding/order for supply of goods was executed on 14.10.2013.

[4]. In pursuance of the aforesaid memorandum of understanding, the respondents have made various orders for supply of the material. In pursuance of the said orders, the petitioner has delivered the material. The details of which find mention in para 2(f) of the petition. The aforesaid material was delivered at the contract site at Shree Cements Ltd. Unit at Pali, Rajasthan in a satisfactory condition and the same was acknowledged by the Shree Cements Ltd. along with material receipt report. Other details in respect of lorry receipts are also tabulated in sub para (v) of the main para 2(f) of the petition. No complaint whatsoever was ever received by the petitioner in respect of quality and control of the material, nor was any

complaint received in respect of any shortcoming while delivering the goods at the site.

[5]. Petitioner has also pleaded the value of the total goods supplied to the tune of Rs.1,45,16,176/- at the contract site as agreed between the parties. The respondents have made payment of only Rs.36 lakhs as on date and an amount of Rs.1,09,16,176/- along with interest is still due towards the respondents. The petitioner has already invoked the arbitration clause.

[6]. Notice of motion was issued on 11.05.2018. Despite numerous steps taken by the petitioner, the respondents could not be served. Ultimately, the petitioner was granted liberty to serve the respondents by means of substituted service by way of publication in two leading newspapers having circulation in NCR Delhi. The petitioner has already complied with the requirement and now as per report submitted by the office, due publication has been made in two newspapers attached as 'X' and 'Y'.

[7]. The present petition was filed in the year 2018. In view of order dated 19.05.2022 passed in Special Leave Petition (Civil) No.5306 of 2022, the Hon'ble Apex Court has directed that all pending applications under Section 11(5) and 11(6) of

the Arbitration Act and/or any other application either for substitution of Arbitrator and/or change of Arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from that day i.e. 19.05.2022. Since there is no representation on behalf of the respondents, therefore, the pleadings of the petitioner have gone unrebutted.

[8]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ Gurmit Ram (Retd.) R/o 84, Sector 77, Judges Enclave, SAS Nagar, Mohali, Mobile No.8558809938 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.

[9]. 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 equally.

[10]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

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

HMJ Gurmit Ram (Retd.)
R/o 84, Sector 77, Judges Enclave, SAS Nagar, Mohali,
Mobile No.8558809938

[12]. Petition stands disposed of accordingly.

November 15, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No