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

**ARB No.167 of 2016 (O&M)
Date of Decision:09.11.2022**

**Sandhu Poultry Research Breeding Farm and others
.....Petitioners
Vs
Amrit Hatcheries Private Ltd. and another
.....Respondents**

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

Present:Mr. KPS Virk, Advocate and
Mr. J.S. Kang, Advocate
for the petitioners.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to resolve the dispute between the parties arising out of lease agreement dated 30.09.2014.

[2]. Learned counsel for the petitioners submits that the petitioner No.1 is a partnership firm carrying on the business of hatchery, poultry and trading of cattle feed etc. The respondent No.1 is a company registered under the Companies Act, 1956

and is also engaged in the business of hatchery and poultry. The respondent No.2 is a bank from where petitioner No.1 has availed loan. All the assets of the petitioner No.1 in the premises are mortgaged in favour of the respondent No.2 by way of hypothecation. The infrastructure belonging to the petitioners was leased out in favour of the respondent No.1 for a period of seven years w.e.f. 20.10.2014. The date of expiry of the lease was 19.10.2021. During the initial period of five years from the date of agreement, there was a "lock in period", whereby the first party was not entitled to terminate the lease agreement. The respondent No.1 did not adhere to the conditions of the lease deed and allegedly terminated the lease agreement on 01.01.2016 by taking away assets lying in the premises and without making payment of the dues/arrears of rent etc, which according to the learned counsel for the petitioners, had accumulated to the tune of Rs.1,75,00,000/- as on the relevant date. The said amount has now further swallowed in terms of payable interest thereon. The petitioners have already invoked the arbitration clause.

[3]. Notice of motion was issued on 26.08.2016. As per office report, the respondent No.1 was served way back in December 2017, but none has appeared on behalf of the respondent No.1 since then. This is evident from the

interlocutory order dated 30.01.2020 passed in this case. Vide order dated 08.08.2022, the respondent No.1 was proceeded against *ex parte* and the case was fixed for arguments.

[4]. Learned counsel for the petitioners submits that even in terms of para No.49 of **Vidya Drolia and others Vs. Durga Trading Corporation, (2021) 2 SCC 1**, the Hon'ble Apex Court has held that the landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable where specific Court or Forum has been given exclusive jurisdiction to apply and decide special rights and obligations. According to the learned counsel for the petitioners, the very nature of claim made by the petitioners (in terms of arrears of rent and damage caused to the property) the same would not be covered under the rent control legislation. The arbitration clause has already been invoked.

[5]. Learned counsel also refers to **Sunil Kumar Sharma Vs. M/s Perfexa Solutions Pvt. Ltd., 2009 SCC Online P&H 889** to submit that the proceedings in the designated rent Court would be an independent cause of action and has nothing to do with the non-payment of lease agreement in pursuance of lease deed executed between the parties. Since the petitioners have

claimed arrears of rent and amount payable towards the damage caused by the respondents in the premises, therefore, the dispute is to be adjudicated upon in terms of Clause 20 of the lease agreement. According to the aforesaid clause, sole Arbitrator is to be jointly appointed by the Zonal Manager, Bank of India, Chandigarh Zone and venue of Arbitration shall be at Panipat.

[6]. The objection raised by the petitioner was in the context of incompetence of the departmental person to conduct any arbitral proceedings in view of ratio laid down in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377;** **Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755;** **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1.** Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or

the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[7]. The appointment of Arbitrator as per clause in the agreement is no more a valid procedure and the same has been deprecated by the Hon'ble Apex Court by holding that the appointment of Arbitrator cannot be done unilaterally by one party or the representative of one party to the agreement.

[8]. The petitioners have tentatively valued their claim to the tune of Rs.1,75,00,000/- along with interest and damages to be adjudicated by the Arbitrator.

[9]. The pleadings of the petitioners have gone unrebutted.

[10]. In view of **Bharat Sanchar Nigam Ltd. And another**

Vs. M/s Nortel Networks India Pvt. Ltd., 2021(2) RCR (Civil)

337, in case of even slightest doubt in respect of accrual of cause of action, the Arbitrator has to be appointed. The Arbitrator is also competent to decide his/her jurisdiction in terms of Section 16 of the Arbitration and Conciliation Act, 1996. It has been held that the limitation of filing an application under Section 11 of the Arbitration and Conciliation Act would arise upon the failure to make the appointment of the Arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 of the Arbitration and Conciliation Act can be filed only after a notice of arbitration in respect of the particular claim to be referred to arbitration is made and there is a failure to make the appointment. The period of limitation for filing a petition, seeking appointment of an Arbitrator cannot be confused with the period of limitation applicable to the substantive claims. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the substantive disputes is necessarily distinct from that of filing an application for appointment of an Arbitrator. Under Article 137 of the Limitation Act, 1963, an application for appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act is covered being residual provision. Since none of the Articles in the Schedule of the Limitation Act, 1963 provide a

time period for filing an application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, therefore, it is covered under the residual provision of Article 137 of the Limitation Act and the period of limitation is three years from the time when the right to apply accrues. The right to apply accrues only when there is a failure to make the appointment of the Arbitrator within a period of 30 days from issuance of notice of invoking arbitration. Application under Section 11 of the Arbitration and Conciliation Act can be filed only after a notice of arbitration in respect of the claim to be referred to Arbitrator is made and there is a failure to make appointment by the respondents.

[11]. For the reasons recorded hereinabove, I hereby appoint **HMJ Rajan Gupta (Retd.), House No.645, Sector-16, Chandigarh, Mobile No.9780008140** 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.

[12]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the 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.

[13]. The venue of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

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

HMJ Rajan Gupta (Retd.),
House No.645, Sector-16, Chandigarh,
Mobile No.9780008140

[15]. Petition stands disposed of accordingly.

09.11.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No