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

**ARB No.186 of 2018 (O&M)
Date of Decision: 21.10.2022**

BSPCL INFRASTRUCTURE LTD

.....Petitioner

Vs

COLLAGE GROUP INFRASTRUCTURE PVT LTD

.....Respondent

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

Present: Mr. Yash Pal Gupta, Advocate
for the petitioner.

Mr. Arun Kaundal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended as on date (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to settle the dispute between the parties.

[2]. A registered lease deed was executed on 05.11.2012 between the parties, wherein the petitioner had agreed to give its building to the respondent on lease. Lease deed was executed and terms and conditions were settled. The lease was

for a period of three years from 01.11.2012 to 31.10.2015 which was also the lock-in period. The monthly rent was also agreed @ Rs.85/- per sq. feet i.e. Rs.11,54,980/- along with applicable taxes. Supplementary agreement was also executed on 19.08.2014, wherein the second floor of the premises was vacated by the respondent and rent of the said premises was accordingly revised to Rs.5,89,985/-. The respondent vacated the premises on 15.10.2015 and on that day a sum of Rs.32,30,935/- was due and payable by the respondent towards rent, electricity, HSD portion and maintenance charges less the security deposit. Besides this a sum of Rs.16,21,577/- was also due towards TDS deducted by the respondent from the rent which was neither paid to the Income Tax Authority nor had the respondent issued TDS certificate to the petitioner.

[3]. Petitioner has also pleaded that in discharge of its partial liability, the respondent issued six post dated cheques amounting to Rs.5 lakhs and cheque dated 17.01.2016 amounting to Rs.7 lakhs drawn on SBI, Sushant Lok, Gurugram to the petitioner. On being presented, the cheques were dishonoured. A complaint under Section 138 of the Negotiable Instruments Act was filed by the petitioner in respect of four cheques, wherein the petitioner has already made payment of Rs.22 lakhs. On receipt of payment, the petitioner has already

withdrawn the aforesaid complaint.

[4]. The amounts in respect of cheques No.317333 and 317336 are still due towards the respondent. As per record maintained by the petitioner, a total sum of Rs.26,52,512/- including TDS is due and payable by the respondent to the petitioner. Petitioner has already invoked the arbitration clause and has also proposed name of sole Arbitrator i.e. Sh. Jitender Singh, Advocate.

[5]. As per reply filed by the respondent, the TDS deducted by the respondent is lawful and the issue cannot be decided by the Arbitrator in view of the Income Tax Act, 1961 and the default, if any, is to be dealt with as per the provisions of the said Act. Respondent has also objected to the present petition on the ground that the matter relates to rendition of account and at best can be adjudicated by the civil Court of a competent jurisdiction.

[6]. Perusal of reply would show that the same is evasive as regards different claims made by the petitioner. The Arbitrator can decide his/her jurisdiction in terms of Section 16 of the Arbitration and Conciliation Act, 1996. It appears that there exists a *bona fide* dispute between the parties, arising out of lease deed dated 05.11.2012 and supplementary agreement

dated 19.08.2014 for which the arbitration clause has also been invoked by the petitioner. All the pleas raised by the respondent can very well be commented upon/decided by the Arbitrator. Name of proposed Arbitrator is not acceptable to the respondent.

[7]. Keeping in view the facts and circumstances of the case, I hereby appoint Sh. Arun Kumar Singal, District & Sessions Judge (Retd.) R/o #A-61 (2nd Floor) Palladians, Near Baani Square, Sector 47, Gurugram, Mobile No.9991743666 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.

[8]. 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.

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

[10]. A copy of this order be dispatched to the Arbitrator at

the following address:-

Sh. Arun Kumar Singal, Distt. & Sessions Judge (Retd.)
R/o #A-61 (2nd Floor) Palladians, Near Baani Square,
Sector 47, Gurugram, Mobile No.9991743666

[11]. Petition stands disposed of accordingly.

October 21, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No