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

ARB No. 226 of 2018 (O&M)  
Date of Decision: 17.08.2022

Modern Cooling Solution

-Petitioner

Versus

Punjabi University through Registrar, Patiala and others

-Respondents

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

Present: Ms. Deepali Puri, Advocate, and  
Mr. Hari Singh, Advocate,  
for the petitioner.

Mr. Gurpreet Singh Dhillon, Advocate,  
for the respondents.

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**RAJ MOHAN SINGH, J.**

Petitioner has preferred this petition under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of an independent arbitrator.

Admittedly, an arbitration agreement was executed between the parties vide which the petitioner was allocated the work by the Executive Engineer, Construction Wing for and on behalf of Punjabi University, Patiala on 19.01.2012 having a completion period of six months based on a tender of the petitioner dated 27.06.2011.

The formal contract/agreement was signed between the petitioner and Punjabi University on 19.04.2012.

A dispute arose in respect of functioning of air conditioning work and the petitioner invoked the arbitration clause 25 for redressal of its grievance. The invocation of dispute redressal mechanism as contained in Clause 25 has not yielded any fruitful result which led to the filing of the present petition.

The disputed claim of the petitioner is in respect of about Rs.38 lacs.

Learned counsel for the petitioner submits that the petitioner has already invoked the arbitration clause. As per Section 12(5) of the Act as amended by Act No.3 of 2016 w.e.f. 23.10.2015, the Departmental Officers cannot be appointed as sole arbitrator and independent arbitrator has to be appointed, therefore, prayer has been made for appointment of independent arbitrator.

*Per contra*, learned counsel for the respondents submits that infact M/s Voltas Company Limited is the necessary party and the work order was placed before M/s Voltas Company Limited, who in turn entrusted the work to the petitioner. The stand of the respondent- University is that the petitioner was given time upto 10.12.2015 to complete the work

assignment. Clause No.3 was invoked as the work was not completed by the given date. As per Clause 3 (iv) of the agreement, penalty was imposed to the tune of 7.5% and agreement was terminated on 24.12.2016. The respondent- University vide letter dated 20.02.2018 informed the petitioner that M/s Voltas Company Limited has not proceeded with the arbitration. Thereafter, petitioner again issued a letter to the respondent- University on 28.02.2018, informing that agreement/contract was executed between the petitioner and the respondent and M/s Voltas Company Limited was not a party to the contract. The respondent was requested to supply correct and specific information/documents instead of diverting the issue by mis-leading information.

In response to the aforesaid letter dated 28.02.2018, the respondent- University has issued a letter dated 20.03.2018 informing the petitioner that restricted tender was called from M/s Voltas Company Limited and others. The tender was not called from the petitioner firm and therefore, M/s Voltas Company Limited is a necessary party and it is for the M/s Voltas Company Limited to proceed with the matter. Ultimately, the respondent- University informed the M/s Voltas Company Limited that the case is hopelessly delayed and is time barred.

Admittedly, the parties have entered into a

contract/agreement. Clause 25 of the contract/agreement provides for an arbitration mechanism. In view of amendment Act of 2015, departmental authority cannot be appointed as sole arbitrator, rather independent arbitrator has to be appointed. Petitioner has already invoked the arbitration clause.

The objections raised by the respondent in respect of jurisdiction of the arbitrator and with regard to limitation can be appropriately answered by the arbitrator as the arbitrator has the power to decide his own jurisdiction. The plea regarding limitation can also be gone into by the arbitrator. It is a settled preposition of law that all disputes and differences arising out of or in any manner touching upon or concerning the agreement shall be referred to the independent arbitrator. Act of 1996 is a complete code. Arbitrator has the power to rule on its own jurisdiction including any objection regarding existence of valid arbitration agreement.

Existence of an arbitral dispute has to be answered in view of facts and circumstances of the present case.

Keeping in view the aforesaid position, this petition is allowed. Mr. Brij Mohan Vinayak, Advocate, House No.538, Phase-I, Mohali-160055, Mobile No.9417284296 is appointed as independent arbitrator to resolve the dispute between the parties.

The aforesaid 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 dispute between the parties. The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29-A of the Act.

The Arbitrator shall be paid the fee in accordance with 4<sup>th</sup> Schedule of the Act as amended from time to time. The fee shall be borne equally by the parties.

A copy of this order be dispatched to Mr. Brij Mohan Vinayak, Advocate, House No.538, Phase-I, Mohali-160055, Mobile No.9417284296.

17.08.2022

Jyoti Sharma

**(RAJ MOHAN SINGH)**  
**JUDGE**

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable        | : | Yes/No |