

237

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

ARB No.71 of 2018 (O&M)

Date of Decision: 08.09.2022

M/s Charanjit Kochhar Engineer and Contractors

.....Petitioner

Vs

Paras Seasons Heaven Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gaurav Rana, Advocate for the petitioner.

Mr. Saurav K. Manchanda, Advocate for
Mr. Amandeep Singh Talwar, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Section 3(2) of the Scheme for Appointment of Arbitrator to settle the dispute between the parties.

[2]. Petitioner was awarded the work contract by the respondent on 07.08.2014 for a total amount of Rs.21,94,109/-. The work order was also amended on 27.04.2015, thereby increasing the value of work to the tune of Rs.41,34,041/-. After completion of the work, 3rd RA Bill was prepared on 31.12.2015 in a sum of Rs.8,55,473/-. Petitioner has invoked arbitration clause on 13.11.2017. Petitioner has staked his entitlement to the tune of Rs.09,86,415/- in lieu of the work done and this

amount has been illegally withheld by the respondent. The petitioner has claimed damages to the tune of Rs.5 lacs on account of loss of profit as a result of delay in execution of work, which was attributable to the respondent. Petitioner has also claimed interest @24% per annum.

[3]. The pleas of the petitioner would be subject to the material evidence to be led by the petitioner at an appropriate stage and in the appropriate Forum.

[4]. Learned counsel for the respondent has no objection in case sole independent Arbitrator is appointed to decide the claim of the petitioner in accordance with law.

[5]. Reference can be made to **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 vs. Energo Engineering Projects Limited 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.”

[6]. In my considered opinion, the plea of the respondent can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid cited case laws.

[7]. Keeping in view the facts and circumstances of the case, I hereby appoint Sh. CB Jaglian, District and Sessions Judge (Retd.), Flat No.D-503, Alaknanda, CGHS Plot No.GH-45, Sector-56, Gurugram-122011, Haryana, Mobile No.9999056150, chanderbjaglian@gmail.com 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 is requested to 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 the petitioner and respondent No.1 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. CB Jaglian, District and Sessions Judge (Retd.),
Flat No.D-503, Alaknanda, CGHS Plot No.GH-45,
Sector-56, Gurugram-122011, Haryana
Mobile No.9999056150
chanderbjaglian@gmail.com

[11]. Petition stands disposed of accordingly.

08.09.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No