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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB No.73 of 2018 (O&M)
Date of Decision: 13.09.2022

M/S M G PLOTTERS PRIVATE LIMITED

.....Petitioner

Vs

MANMOHAN SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sachin Jain, Advocate and
Mr. Vikram Bali, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an impartial sole Arbitrator to decide the *lis* between the parties.

[2]. The petitioner is aggrieved against the action of the respondents in cancelling the Special Power of Attorney dated 05.07.2013 which is in violation of terms and conditions of the Collaboration Agreement and the cancellation of special power of attorney has resulted in huge losses to the petitioner.

[3]. Learned counsel for the petitioner has made reference to the grounds leading to filing of the present petition to show that petitioner has incurred losses towards payment of licence fees to the tune of Rs.4,91,90,530/- on 01.04.2014, 27.07.2014 and 23.08.2014.

[4]. Learned counsel for the petitioner further submits that the petitioner does not stake its claim to the other pleadings forming part of para no.16 of this petition, rather confines its claim only to the tune of Rs.4,91,90,530/-.

[5]. Notice of motion was issued on 23.08.2014. As per office report, service is complete. On 27.05.2022, following order was passed by the Co-ordinate Bench of this Court:-

Office note giving details of service report is perused.

None appears on behalf of the respondents despite service.

Learned counsel for the applicant prays for some time to address arguments.

At request, adjourned to 13.09.2022.

(LISA GILL)
JUDGE

May 27, 2022
rts''

[6]. Learned counsel for the petitioner submits that there is a contract agreement having arbitration clause No.28 and the petitioner has already invoked the same by issuing a legal

notice dated 23.05.2017.

[7]. In view of no contest shown by the respondents and having gone through the material on record, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. 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'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.”

[8]. In my considered opinion, the plea of the respondents (if any) 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 aforecited case laws.

[9]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ Jasbir Singh (Retd.), R/o House No.839, Sector 16, Chandigarh, Mobile No.9780008106 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.

[10]. 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 the petitioner and the respondents in equal proportion.

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

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

HMJ Jasbir Singh (Retd.),
R/o House No.839, Sector 16, Chandigarh,
Mobile No.9780008106

[13]. Petition stands disposed of accordingly.

September 13, 2022	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No