

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

227

ARB No. 172 of 2019 (O&M)

Date of Decision: 09.11.2022

MAHAJAN ENTERPRISES

.....Petitioner

Vs

**GENERAL MANAGER, NORTHERN RAILWAY, BARODA
HOUSE, NEW DELHI AND ANOTHER**

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Pankaj Gupta, Sr. Panel Counsel
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act") for appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of contract agreement dated 04/05.12.2017.

Evidently the contract agreement has arbitration clauses Nos. 64 (3) (a) (i) and 64 (3) (a) (ii). In terms of clause 64.7, statutory modifications shall also apply to the arbitration

proceedings under these clauses. It appears from the record and the stand of the respondents that the respondents are not averse to the appointment of arbitrator provided that the arbitrator is appointed from the panel of four retired Railway Officers as approved by the General Manager, Northern Railway.

Precisely, in this context the respondent Northern Railway has issued a letter dated 07.05.2019 to the petitioner, suggesting the following names:-

1. Sh.Vipin Jha, Retd. AGM/NFR
2. Sh.R.P.Mishra, Retd. CAO/IROAF
3. Sh.K.K.Gupta Retd.CE/C/ECR
4. Sh.Satish Kumar, Retd. AGM/ER

The petitioner was requested to suggest at least two names out of the aforesaid panel to be appointed as Co-Arbitrator by the General Manager, Northern Railway within the prescribed period. Earlier to the aforesaid letter dated 07.05.2019, the petitioner had issued a letter to the respondents on 28.01.2019 in the context that the petitioner was not agreeing for waiving the clause 12 (5) of the Act in the context of independence and impartiality of the Arbitrator.

Thereafter, the petitioner got issued a notice under Sections 8 and 11 of the Act as well as under relevant clause 64 of the general conditions of the contract of Railway. Even in the context of letter dated 07.05.2019 issued by the respondents, the petitioner in its final notice for appointment of an independent

and impartial arbitrator has objected to the aforesaid letter, suggesting the names of four arbitrators.

A perusal of the record would show that the controversy hinges upon the appointment of arbitrator/ arbitrators. According to learned counsel for the petitioner, sole arbitrator be appointed in view of law laid down by the Hon'ble Apex Court 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**, whereas the respondent department is still pressing for appointing the arbitrator from the panel of arbitrators as suggested in the letter dated 07.05.2019.

The tentative value of the claim is about Rs. 34 lakhs along with interest.

In view of aforesaid, I hereby appoint Sh. Satish Chander, Additional D.G. (Retd.) Military Engineering Services, # 89, Lane No.4 Upper Greater Kailash Jammu- 180011 (Mobile: 9417256367 & 8484016689) 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.

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 equally shared by the parties.

The venue of the Arbitration proceedings shall be the place to be disclosed by the Arbitrator as per his convenience.

A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Satish Chander, Additional D.G. (Retd.)
Military Engineering Services, # 89, Lane No.4
Upper Greater Kailash Jammu- 180011 (Mobile:
9417256367 & 8484016689).

(RAJ MOHAN SINGH)
JUDGE

09.11.2022

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whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no