

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

254

**ARB No. 372 of 2022 (O&M)
Date of Decision: 05.12.2022**

M/S B.S CARGO MOVERS

.....**Petitioner**

Versus

INDIAN OIL CORPORATION LTD AND ANOTHER

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Varun Sharma, Advocate
for the petitioner.

Mr.S.C. Kapoor, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to adjudicate the dispute between the parties arising out of contract agreement/notice inviting tender.

Notice inviting tender having arbitration clause No.25 is not in dispute. The aforesaid contract agreement was executed on 03.06.2019 for road transportation of petroleum products by bottom loading tank trucks-MS/HSD/Branded fuels at Una Terminals as specified by IOCL from time to time. Petitioner was engaged for the aforesaid job pursuant to letter of intent dated 03.06.2019. A dispute arose between the parties in respect of losses incurred by the petitioner including the recurring loss occurred due to black listing of the petitioner.

Notice of invocation was issued to the respondents on 30.07.2022. A perusal of the same would show that there is

some anomaly as regards the status of the advocate and of address. The respondents sent their reply on the address of the advocate but the same was received back with the endorsement that no such office of advocate was found to be in existence on the given address.

Be that as it may, in view of the stand taken by the respondents, the existence of dispute has not been denied. Even the respondents are ready to appoint their own arbitrator in view of the arbitration clause. The petitioner has tentatively valued its claim to the tune of Rs. 23.5 lacs i.e. the amount of Rs.7.5 lacs towards security and Rs.1.20 lacs towards penalty and Rs.5 lacs per month towards recurring loss, which according to the petitioner has accumulated to the tune of Rs.23.5 lacs as of now.

Since the agreement has been executed after coming into force the amendment in the act, therefore the appointment of official arbitrator is deprecated in view of law laid down in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**; **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.”

Having considered the rival claims of the parties, I find that a bona fide dispute exists between the parties for which the parties have already invoked the arbitration clause.

In view of the aforesaid facts, I hereby appoint Mr.Karan Bhardwaj, Advocate, House No. 3410, Sector 46-C, Chandigarh (Mobile:9888232693) 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 borne by the petitioner and respondent(s) in equal proportion.

The venue will be as per the convenience of the Arbitrator.

The respondent shall also be entitled to raise any

counter claim in respect of the stand taken in reply to the notice of invocation.

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

Mr.Karan Bhardwaj, Advocate, House No. 3410, Sector 46-C, chandigarh (Mobile:9888232693).

Petition stands disposed of accordingly.

**(RAJ MOHAN SINGH)
JUDGE**

05.12.2022

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