

235

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

**ARB No.20 of 2019
Date of Decision: 12.09.2022**

AXALTA COATING SYSTEMS PRIVATE LIMITED

.....Petitioner

Vs

V. RAJ AUTOLINK PRIVATE LTD

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Mandeep Kaur, Advocate for
Mr. Aman Bansal, Advocate
for the petitioner.

None for the respondent.

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 independent Arbitrator to settle the dispute between the parties.

[2]. Notice of motion was issued on 10.02.2020. As per office report, service is complete. Vide order dated 18.05.2022, the case was adjourned for today for arguments after noticing the fact that there was no representation on behalf of the respondent despite service.

[3]. Learned counsel for the petitioner submits that there is a contract agreement having arbitration clause and in case of dispute the matter has to be referred to sole independent Arbitrator. Petitioner has already invoked the arbitration clause no.12.3 of the supply agreement dated 06.04.2015.

[4]. Having gone through the material on record, I find that the dispute, if any, 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.”

[5]. 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 aforecited case laws.

[6]. Keeping in view the facts and circumstances of the case, I hereby appoint Sh. Gaurav Khera, Advocate R/o # 1784, Sector 15, Panchkula, Mob. No.9876994142, email ID: Lawyerkhera@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.

[7]. The Arbitrator shall 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 in equal proportion.

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

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

Sh. Gaurav Khera, Advocate

R/o # 1784, Sector 15, Panchkula

Mob. No.9876994142,

email ID: Lawyerkhera@gmail.com

[10]. Petition stands disposed of accordingly.

September 12, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No