

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

ARB-212-2018 (O&M)
Date of Decision:- 31.8.2023

Taurant Projects Ltd.

... Petitioner

Versus

Ambala Municipal Corporation and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S. Rana and Mr. S.K. Gupta, Advocates for the petitioner.

Mr. Gaurav Jindal, Advocate for respondent No. 1

None for respondent No. 2.

GURVINDER SINGH GILL, J.

1. The petitioner M/s Taurant Projects Ltd has approached this Court seeking appointment of an Arbitrator in terms of provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred to as 'the Act').
2. Notice of motion had been issued.
3. Shri Gaurav Jindal, Advocate has put in appearance on behalf of respondent No. 1 – Ambala Municipal Corporation.
4. An agreement dated 7.7.2008 (Annexure A-1) had been signed amongst respondent no. 1 and petitioner for implementaion of Municipal Solid Waste (MSW) Processing Plant at Patwi. An agreement dated 16.1.2007 (Annexure A-2) had also been executed between the petitioner and respondent no. 2, being the nodal agency of government, as per which petitioner was to design,

construct and commission Municipal Solid Waste Disposal Plant spreaded over an area of 17 acres to be located in Ambala. The said Plant was to be operated for 10 years by the petitioner and thereafter was to be entrusted to respondent no. 1, who was to collaborate with petitioner for management of the same and in respect of which a separate Operation and Maintenance Agreement dated 7.7.2008 was entered into amongst the parties i.e. between petitioner and respondent no. 1. As per the agreement, respondent No. 1 – Ambala Municipal Corporation was to transport the waste to the tune of about 80 Tons per day to the Plant and was to provide electricity for operation of the Plant. Respondent No. 2 was to provide requisite infrastructure needed for setting up the Plant. As per the said agreement, the petitioner was to operate and maintain Compost Plant of capacity of 60 Tons per day. One of the terms of the agreement was that respondent no. 1 was to obtain clearance from the Pollution Board. Some of the conditions, not having been complied with, a dispute arose amongst the parties. The petitioner had also sent several bills towards idling charges but to no avail. The petitioner claimed that he had suffered huge financial losses and ultimately invoked arbitration clause. The arbitration clause in the contract is reproduced herein-under :-

“12.2 Arbitration proceedings

- i. Procedure subject to the provisions of clause 11.1 above, any dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each party and the third to be appointed by the two arbitrations appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint the arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act.

- ii. Place of Arbitration – the place of Arbitration shall be Ambala, Haryana and the Courts in Ambala alone shall have jurisdiction to deal with matters arising there from.”

5. The petitioner appointed Shri Jasbir Singh (H.No. 5617, Modern Housing Complex, Mani Majra, Chandigarh) as his Arbitrator and sent letter dated 19.12.2017 to the respondents to nominate their Arbitrator within 15 days. However, the same not having evoked any response, the petitioner filed the instant petition in this Court.
6. Learned counsel for the petitioner has submitted that having regard to the arbitration clause in the contract entered into between the parties and the fact that a dispute has arisen, the arbitration proceedings need to commence and since the respondents have not come forward to nominate any of their Arbitrator, some Arbitrator may be appointed by this Court.
7. Opposing the petition, the learned counsel representing the respondent has vehemently argued that the instant application is not maintainable inasmuch as a settlement dated 15.2.2011 (Annexure A-3) had already been effected amongst the parties before the Mediation and Conciliation Centre, Delhi and that thereafter, the petitioner also filed contempt petition and LPA in Delhi High Court as well as execution petition and had also approached NGT and that all such petitions having been dismissed, the petitioner cannot be allowed to initiate the instant proceedings and that such like conduct clearly amounts to forum shopping.
8. This Court has considered rival submissions addressed before this Court.
9. The factum of execution of the contract amongst the parties and there being arbitration clause is not disputed. It is also evident that a dispute had arisen amongst the parties in respect of the subject matter of the contract. Although,

learned counsel for respondent No. 1 submitted that a settlement had already taken place before the Mediation and Conciliation Centre, Delhi and that thereafter, the petitioner had also approached the Delhi High Court by way of filing contempt petition and LPA, which would preclude him from invoking arbitration proceedings but this Court is unable to subscribe to the aforesaid contention for the following reasons :-

- (i) that a perusal of the settlement shows that by way of said agreement an understanding was reached at between the parties as regards execution of the work, particularly as regards providing uninterrupted supply of power, obtaining NOC from Haryana State Pollution Board etc. and was not pertaining to any monetary claim/damages/compensation by the petitioner;
- (ii) that in case the petitioner had approached Delhi High Court with respect to any dispute which according to petitioner was to be adjudicated through arbitration only, the respondents could have raised an objection that there exists an agreement amongst the parties to settle their disputes by way of arbitration but no such objection was taken;
- (iii) that the mere fact that the petitioner had approached Delhi High Court wherein some kind of settlement had been entered into pertaining to execution of the work and in respect of which some contempt petition and LPA came to be filed will not set at naught the arbitration clause in toto.

10. In view of the discussion made above, particularly the fact that there exists an arbitration clause and notice had been duly issued and there is nothing on

record to disentitle the petitioner from invoking arbitration, the petition merits acceptance. Having regard to the facts of the case, this Court is of the opinion that the matter can be effectively adjudicated by a sole Arbitrator instead of a three member Arbitral panel, as had been agreed amongst parties in arbitration clause 12.2.

11. It is now well settled that after petition under Section 11(6) of the 1996 Act is filed before the court seeking appointment of an arbitrator, the power to appoint an arbitrator in terms of the arbitration clause of the agreement ceases. Reference for judicial precedents in this regard may be made to judgments of Hon'ble Supreme Court in Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Another : (2000)8 SCC 151 and Union of India Vs. Bharat Battery Mfg. Co. (P) Ltd. : (2007) 7 SCC 684 and a Coordinate Bench of this Court in ARB Case No.24 of 2010 titled M/s Akash Enterprises Vs. The General Manager, Northern Railway and others decided on 17.03.2011. In view of the settled position of law, respondents must be held to have waived the right to appoint and is estopped from appointing the Arbitral Tribunal under Clause 12.2 of agreement dated 7.7.2008. The Court can on petition filed under Section 11(6) of the 1996 Act appoint an independent person as sole Arbitrator. Reference in this regard may be made to judgment of Hon'ble Supreme Court in Denel (Proprietary Limited) Vs. Bharat Electronics Ltd. and another : 2010 (3) RCR (Civil) 233 and Delhi High Court in ARB.P. 779/2019 titled M/s Arvind Kumar Jain Vs. Union of India decided on 04.02.2020.
12. Justice Jasbir Singh (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Justice Jasbir

Singh (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

13. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.
14. The venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
15. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 25.9.2023 at 11:00 A.M. or any other date suitable to all concerned.
16. A copy of this order be sent to the appointed Arbitrator at the given address :
- H.No. 839, Sector 16,
Chandigarh.
Phone No. 97800-08106
17. The petition is accordingly disposed of in the above mentioned terms.

31.8.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No