

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

ARB-81-2017
Date of Decision: 01.09.2023

M/S ECO PARYAVARAN ENGINEERS & CONSULTANTS PVT.
LTD. ...Petitioner

V/S

M/S H B N HOMES COLONISERS PVT LTD & ANR.
...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Anupam Singla, Advocate
for the petitioner.

GURVINDER SINGH GILL J. (Oral)

1. Pursuant to order dated 01.12.2022, publication for service upon respondent No. 1, has been effected in two newspapers i.e. in *Indian Express* and *Amar Ujala* respectively on 30.12.2022. Relevant pages from the said newspapers have been placed on record.
2. Case has been called several times during the day but none has put in appearance on behalf of respondent No. 1.
3. As such, respondent No. 1 is hereby proceeded against ex-parte.
4. The instant petition has been filed by M/s Eco Paryavaran Engineers and Consultants Pvt. Ltd. under Section 11(4) of Arbitration and Conciliation Act, 1996 seeking appointment of 2nd Arbitrator on behalf of respondent No. 1 and to adjudicate on the dispute between the parties.
5. The petitioner had entered into a contract with respondent No. 1, as per which the petitioner was allotted the work of execution of Supply, Installation, Testing and Commissioning of 200 KLD Sewage Treatment

of respondent No. 1, situated at Bathinda but a dispute had arisen between the parties. As per the said contract (Annexure A-1), the disputes, if any, arising between the parties were to be settled by way of arbitration. Out of two Arbitrators, one to be nominated by the Contractor and the other to be nominated by respondent No. 1 and in case of any disagreement amongst them, 3rd Arbitrator shall be appointed by both of them.

6. It is the case of the petitioner that he had nominated his Arbitrator, who is respondent No. 2 and also issued notice to respondent No. 1 for nominating Arbitrator on his behalf as per Annexure- 'A-1', but to no avail, leading to filing of the instant petition. It has been submitted that under these circumstances, a Sole Arbitrator may be appointed for adjudication of dispute.
7. 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 16.
8. It is now well settled that after petition under Section 11(4) 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 16 of agreement dated 07.12.2011. The Court can on petition filed under Section 11(4) 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.

9. As the respondent has chosen not to appear despite having been served and has been proceeded against ex-parte, the petition is accepted and Shri G.K. Dhir, District & Sessions Judge (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Shri G.K. Dhir, District & Sessions Judge (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.
10. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled.
11. The venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
12. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 27.09.2023 at 11:00 A.M. or any other date suitable

to all concerned.

13. A copy of this order be sent to the appointed Arbitrator at the given address:

H.No. 572, Old Sunny Enclave, Behind Gurudwara Sahib,

Sector 123-125, Kharar,

District SAS Nagar (Mohali)

Phone No. 98157-39308, 85588-03501

14. The petition is accordingly disposed of in the above mentioned terms.

01.09.2023
Ajay Goswami

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No