

2023:PHHC:117924

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

ARB-24-2021 (O&M)
Date of Decision:-6.9.2023

Shalini Govil ... Petitioner

Versus

M/s Intelligent Industries ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. N.S. Diwana, Advocate for
Mr. Yashpal Gupta, Advocate for the petitioner.

Respondent is proceeded against *ex parte*.

GURVINDER SINGH GILL, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator so as to adjudicate on the dispute between the parties.
2. The parties had entered into Memorandum of Understanding (MOU) dated 5.4.2015 (Annexure P-1), whereby the petitioner agreed to invest her money and further granted friendly loan of Rs. 50 lacs at an interest of 18% per annum in the name of the respondent's proprietorship firm. It was agreed between the parties that the respondent will pay regular interest over the invested amount which was duly secured by post-dated cheques. The respondent intentionally stopped making payment of interest after April, 2018. As per Clause – 4.1 of the said MOU dated 5.4.2015 (Annexure P-

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 petitioner and the other to be nominated by the respondent and in case of any disagreement amongst them, 3rd Arbitrator shall be appointed by both of them.

3. A dispute having arisen, the petitioner served notice dated 28.1.2020 (Annexure P-3) upon the respondent to appoint an Arbitrator. On failure of respondent to do the needful, the instant petition has been filed.
4. It is the case of the petitioner that he had nominated his Arbitrator namely Shri R. Narayanan, Advocate, Office address 1/12A, Block-A, Jangpura Extension, New Delhi and also issued notice to the respondent for nominating Arbitrator on his behalf, 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.
5. The respondent has already been proceeded against *ex parte* vide order dated 16.5.2022.
6. 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 4.1.
7. 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 4.1 of agreement/MOU dated 5.4.2015. 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.

8. 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 M.P.Mehndiratta, District & Sessions Judge (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Shri M.P.Mehndiratta, District & Sessions Judge (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.
9. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled.

10. The venue for the Arbitration shall be at Arbitration Centre, Gurugram or at any other place convenient to all concerned.
11. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 30.9.2023 at 11:00 A.M. or any other date suitable to all concerned.
12. A copy of this order be sent to the appointed Arbitrator at the given address :
- H. No. 1090, Sector - 15,
Part-2, Gurugram.
Phone No. 92509-25555.
13. The petition is accordingly disposed of in the above mentioned terms.

6.9.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No