

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

ARB-435-2022 (O&M)
Date of Decision:-15.9.2023

M/s Bihariji Aghro Foods Private Limited

... Petitioner

Versus

M/s Punjab State Grain Procurement Corporation Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pawan Arora and Ms. Ojaswini Gagneja, Advocates,
for the petitioner.

Mr. Naresh Gopal Sharma, Advocate for
Mr. Mehardeep Singh, Advocate, for the respondent.

GURVINDER SINGH GILL, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 11 of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator so as to adjudicate on the dispute between the parties.
2. Short reply by way of affidavit of Mr. Ajayveer Singh Saraon, Additional Director, Food, Civil Supplies and Consumer Affairs, Punjab cum Additional Managing Director, Punjab State Grains Procurement, has been filed. The same is taken on record. It is specifically deposed in para No.4 of the reply that as per request of the appellant, the respondent has already appointed an Arbitrator on 08.08.2023.

3. Learned counsel for the petitioner has however, vehemently argued that said the Arbitrator is stated to have been appointed on 08.08.2023 i.e. after filing of the instant petition under Section 11 of the Arbitration Act and as such the right of the respondent as regards appointment of Arbitrator stood forfeited in view of ratio of judgment of Hon'ble Supreme Court rendered in Deep Trading Company Vs. Indian Oil Corporation and others AIR 2013 SC 1479.
4. Learned counsel further submits that in any case, the appointment of Arbitrator who has been appointed by Assistant Director, Secretary, Department of Food Civil Supplies & Consumer Affairs, Punjab, would be in the nature of unilateral appointment and would be hit by the judgment rendered in Perkins Eastman Architects DPC and another Versus HSCC (India) Limited, (2020)20 SCC 760, as it can safely be said that Assistant Director, Secretary would have an interest in the outcome of the arbitration.
5. This Court has considered the aforesaid submissions.
6. The fact that the Arbitrator, stated to have been appointed by the respondent, was appointed after the instant petition had been filed in this Court and that the said appointment in any case, having been made by a person who can be said to have interest in outcome of arbitration, would qualify to be termed as "unilateral appointment" in view of ratio of Perkin's case (Supra). As such, the instant petition deserves acceptance and is hereby accepted.
7. Accordingly, Justice Jaishree Thakur (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Justice Jaishree Thakur (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

8. 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.
9. As per agreement expressed by learned counsel for the petitioner, for the sake of the convenience of his respective client, as also of the Arbitrator, the venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
10. After seeking convenience of the Arbitrator, the parties are directed to appear before her on 30.9.2023 at 11:00 A.M. or any other date suitable to all concerned.
11. A copy of this order be sent to the appointed Arbitrator at the given address :
- H. No. 36, Sector - 8-A,
Chandigarh.
Phone No.9814125236.
12. The petition is accordingly disposed of in the above mentioned terms.

15.9.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No