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

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ARB-370-2018 (O&M)
Date of decision: 11.09.2024

Kandhari Beverages Pvt. Ltd.

... Petitioner

Vs.

Suzlon Energy Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gurmohan Singh Bedi, Advocate
Mr. Kanwal Chaudhary, Advocate
Mr. Rahul Rohilla, Advocate for the petitioner.

Mr. Shekhar Verma, Advocate for the respondent.

SUVIR SEHGAL J.

1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act'), petitioner has approached this Court for appointment of an Arbitrator.

2. Counsel for the petitioner submits that the respondent is a manufacturer of Wind Turbine Generators, which are used for generation of electricity. He submits that an order dated 19.11.2005, Annexure P-2, was placed on the respondent for purchase of five 1250 KW Wind Turbine Generators to be installed at Dhulia, Maharashtra. He submits that by Clause 8 of the Purchase Order, respondent

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extended an assurance that in case of any short fall in the minimum guaranteed generation, petitioner would be reimbursed for the deficit units at the MSEB purchase power rate. Counsel submits that when there was a short fall in the generation of electricity, it was brought to the notice of the respondent, who admitted the short fall but contended that the guarantee was for a block of two years only. He submits that the petitioner raised a claim for short fall for the period from 01.05.2006 to 30.04.2007 and approached this Court by filing a petition under Section 11 of the Arbitration Act, which was accepted vide order passed on 29.04.2011, Annexure P-3, and an Arbitrator was appointed. He asserts that a similar dispute arose for the period from May, 2008 to March, 2010 forcing the petitioner to again approach this Court for appointment of an Arbitrator, however, the petitioner remained unsuccessful before this Court. SLP (C) No. 24617 of 2011 was filed before the Supreme Court, which was allowed and an Arbitrator was appointed on 07.01.2013, Annexure P-4. By referring to orders, Annexures P-5 to P-7, counsel submits that when a similar dispute arose for subsequent period, this Court entertained the petitions filed by the petitioner and appointed an Arbitrator to determine the dispute. He submits that when the short fall in the generation of electricity was again detected during the period from April, 2016 to March, 2018, petitioner sent letter dated 18.07.2018, Annexure P-9 calling upon the respondent to make the payment of the short fall alongwith interest. This was followed by legal notice dated

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06.08.2018, Annexure P-10, invoking the arbitration clause. He asserts that by their response dated 31.08.2018, Annexure P-11, the respondent denied the claim, however, it consented for appointment of an Arbitrator, but soon thereafter, it took a volte face and by letter dated 27.10.2018, Annexure P-12 withdrew the consent for reference of the dispute to an Arbitrator, forcing the petitioner to approach this Court.

3. Upon notice by this Court, response has been filed by the respondent contesting the petition. It has been submitted that the minimum guarantee was for a block of two years. It has been submitted that some of the references made to the Arbitrators have culminated in the passing of awards. By making a reference to award dated 18.05.2017, Annexure R-13, counsel for the respondent asserts that the claimant had conceded that besides issue of quantum of interest, no other issue survived for consideration. He contends that the Purchase Order stood discharged in the year 2008. He has placed reliance on *Indian Oil Corporation Limited Versus NCC Limited (2023)2 SCC 539 and Magic Eye Developers Private Limited Versus Green Edge Infrastructure Private Limited and others, (2023)8 SCC 50* to urge that the aspect regarding accord and satisfaction has to be considered by the Court under Section 11 of the Arbitration Act. Petitioner has filed replication to the response filed by the respondent.

4. I have heard counsel for the parties and considered their respective submissions.

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5 Clause 11 of the Purchase Order, which contains the General Conditions, provides that the order is subject to standard arbitration. It is a common case of the parties that a purchase order was placed on the respondent, which contains an arbitration clause. By Clause 8 of the Purchase Order, respondent has extended a minimum generation guarantee. The disagreement between the parties is over the interpretation of this clause. On the one hand, petitioner claims that the minimum guarantee was for two decades, whereas the stand of the respondent is that the guarantee was only for initial period of two years. It is, therefore, evident that there is a dispute between the parties, which has to be resolved. Concededly, dispute pertaining to the earlier period was referred for adjudication to arbitrator(s), who have passed some awards.

6. In a recent decision in **SBI General Insurance Co. Ltd. Versus Krish Spinning 2024(3) RCR (Civil) 497**, Supreme Court has held that it is no longer open to a Court exercising jurisdiction under Section 11 of the Arbitration Act to examine whether the contract stands discharged by accord and satisfaction. The referral Court has to restrict the examination to the questions as to whether there exists an arbitration agreement between the parties and whether petitioner has filed petition under Section 11 of the Arbitration Act within a period of three years of invoking the arbitration clause. As answer to both the questions is positive, this Court is of the view that dispute for the period from April, 2016 to March, 2018 also deserves to be referred to



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an Arbitrator. The prayer made in the petition, therefore, deserves to be accepted.

7. Petition is allowed. Mr. Justice (Retd.) Tejinder Singh Dhindsa, former Judge of Punjab and Haryana High Court, House No. 123, Sector 8, Chandigarh, Mobile Nos. 7837049208, 9815308888, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at his convenience.

9. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

10. A request letter along with a copy of this order be sent to Mr. Justice (Retd.) Tejinder Singh Dhindsa.

11. Pending application(s), if any, is/are disposed of.

11.09.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No