



ARB-84-2019

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

109-4.

ARB-84-2019

Date of decision:24.09.2024

ABS AIR TECH PRIVATE LIMITED

...PETITIONER

VS.

ATOTECH DEVELOPMENT CENTER PRIVATE LIMITED

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vipin Pal Yadav, Advocate,
Mr. J.S. Rana, Advocate &
Mr. J.S. Sohal, Advocate for the petitioner.

Mr. Vivek Gupta, Advocate for the respondent.

SUVIR SEHGAL J. (ORAL)

1. Mr. Vivek Gupta, Advocate has put in appearance on behalf of the respondent and has filed Vakalatnama, with a 'no objection' from the previous counsel, which is taken on record.

2. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short 'the Act'), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the disputes between the parties.

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3. Counsel for the petitioner submits that an agreement for supply, installation, testing and commissioning etc. of makeup air handling units was executed between the parties. Counsel submits that a Letter of Intent (LOI) dated 04.11.2016, Annexure P-2, was issued to the petitioner alongwith the details of the contract and Condition No.8 of the General Conditions of the Contract (GCC) contained an Arbitration Clause. He submits that the petitioner discharged its obligations as per agreed terms and conditions as per LOI, but the respondent illegally withheld some payments. However, instead of making the payment, by notice dated 10.08.2018, Annexure P-4, the contract was terminated. Counsel submits that as there was no possibility of any settlement between the parties, notice invoking the arbitration clause was sent on 18.01.2019, Annexure P-5.

4. Upon notice by this Court, respondent has put in appearance. Despite lapse of more than five years and grant of repeated adjournments, no response has been filed by the respondent. Counsel for the respondent has opposed the prayer made in the petition by submitting that the power to appoint the Arbitrator solely vests with the respondent and that the petitioner has failed to place on record a copy of formal contract, which was executed between the parties. It is also his objection that no negotiation took place prior to the invocation of the arbitration clause, which is a pre-condition.

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

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6. Respondent is not in a position to dispute that the contract was governed by an arbitration clause. Although under the contract, the power to appoint the Arbitrator vests exclusively with the respondent, but this stipulation does not meet the mandate of the statute, which provides for appointment by mutual consent or under Section 11 of the Act. The requirement of a negotiation before invocation of arbitration clause is an empty formality as both the parties have taken a rigid stand. This Court is, therefore, of the view that this requirement can be dispensed with. Additionally, it may be noticed that while terminating the contract vide notice, Annexure P-4, respondent has claimed that the petitioner is liable to pay an amount of more than Rs.2.82 crore approximately, which makes it evident that disputes persist. In the above background, prayer made in the petition deserves to be acceded to.

7. For the foregoing reasons, petition is allowed. Mr. Justice (Retd.) Adarsh Kumar Goel, a former judge of the Supreme Court, C-2/24, Safdarjung Development Area, New Delhi, Mobile No.9910213040, is nominated as a sole Arbitrator to adjudicate the dispute between the parties.

8. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.

9. Needless to mention that all the questions arising between the parties shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

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10. A request letter alongwith a copy of this order be sent to
Mr. Justice (Retd.) Adarsh Kumar Goel.

24.09.2024
sheetal

(SUVIR SEHGAL)
JUDGE

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