



ARB-313-2021 (O & M)&
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

112-2 cases

1. **ARB-313-2021 (O & M)**
Date of decision: 15.05.2024

Hindustan Petroleum Corporation Ltd. **...Petitioner**

Versus

M/s Madan Lal Wadhwa and Co. **...Respondent**

2. **ARB-314-2021 (O & M)**

Hindustan Petroleum Corporation Ltd. **...Petitioner**

Versus

M/s Barkat Ram Amrit Lal **...Respondent**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Raman Sharma, Advocate
for the petitioner in both cases.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Anurag Chopra, Advocate,
Ms. Gauri C. Kaushal, Advocate,
Mr. Jaskaran Singh, Advocate and
Ms. Seerat Saldi, Advocate
for the respondents in ARB-313-2021.

None for the respondents in ARB-314-2021.

SUVIR SEHGAL, J.

1. This order shall dispose of both the abovementioned petitions
as they involve common questions of law and fact.



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2. For the sake of convenience, factual position is being taken from ARB-313-2021.

3. Instant petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, (for short “the Act) for appointment of an Arbitrator.

4. Counsel for the petitioner submits that a Memorandum of Agreement (MOA) dated 18.08.1986, Annexure P-1, was entered into between the parties, whereby the petitioner was appointed as a dealer for retail sales and supply of kerosene for domestic purposes and industrial diesel, etc. He submits that a dispute arose between the parties and a civil suit was filed by the respondent. Upon appearance, petitioner filed an application under Section 8 of the Act for reference of the matter to an Arbitrator. Respondent filed a reply opposing the application and by order dated 10.10.2011, the Trial Court accepted the application and referred the dispute for adjudication to an Arbitrator, however, the proceedings before the Arbitrator could not conclude as the statutory period for the completion of the proceedings expired. He submits that the matter travelled to this Court. By judgment dated 31.12.2020, Annexure P-3, passed in CR-1605-2017, this Court accepted the revision petition filed by the respondent, set aside the impugned orders and directed the parties to take appropriate steps for appointment of a new Arbitrator as per the MOA, Annexure A-1. SLP filed by the respondent was dismissed by the Supreme Court by order dated 12.04.2021, Annexure P-4. Counsel submits that as the mandate of the earlier appointed Arbitrator stood terminated, petitioner is entitled to seek appointment of a new Arbitrator.



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5. Upon notice by this Court, the petition has been resisted by the respondent by filing a reply, wherein besides contesting the petition on merits, it has been submitted that the petitioner has not served any notice under Section 21 of the Act prior to invoking the power of this Court under Section 11 (6), *ibid*. A stand has been taken that the claim of the petitioner is barred by time.

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

7. Section 21 of the Act stipulates as under:-

“21. Commencement of arbitral proceedings- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

8. It is evident from the above provision that arbitral proceedings in respect of a dispute commence on the date on which a request for referring that dispute to arbitration is received by the respondent. Notice is, therefore, a sine qua non and a precondition for initiating the proceedings under the Act. If notice invoking the arbitration clause is not served upon the respondents, arbitration proceedings cannot commence.

9. Reference can also be made to the observations of the Delhi High Court in **Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.** 2017 SCC Online Del 7228:-

“25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of



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the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be 'disqualified' to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this



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defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of [Section 11\(6\)](#) of the Act, without the notice under [Section 21](#) of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under [Section 11](#) of the Act is such failure by one party to respond.”

10. The judgment of the Delhi High Court has been followed in **Malvika Rajnikant Mehta versus JESS Construction 2022 SCC Online Bombay 920** and in **West Bengal Power Development Corporation Limited versus Sical Mining Limited 2022 SCC Online Cal 3036**.

11. During the pendency of this petition, petitioner has filed a miscellaneous application stating that as an objection has been raised by the respondent and in order to avoid any technical glitches, the petitioner has served a notice of demand dated 14.02.2024, AnnexureA-1, upon the respondent. It is, therefore, apparent that no notice was served on the respondent prior to approaching this Court under Section 11(6) of the Act. The service of a notice under Section 21 of the Act during the pendency of the instant petition does not meet the mandate of Section 21 of the Act. The pre-condition for invoking Section 11 (6) of the Act under the statute is a

notice upon the other side and in case within the period of thirty days of its



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service, the respondent does not appoint an Arbitrator, a cause accrues to the petitioner to file a petition seeking appointment. In the absence of notice under Section 21 of the Act, the instant petition is premature and is not maintainable.

12. As the essential requirement of Section 21 of the Act has not been complied with, instant petition is dismissed as premature. However, liberty is granted to the petitioner to approach this Court again, if so advised, after complying with the requirements of the statute.

13. All the pending applications are disposed of.

15.05.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No