



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

112

ARB-198-2023 (O&M)
Date of Decision:11.12.2024

M/s Gagan Coal Pvt. Ltd.

... Petitioner

Vs.

Amarjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Akshay Jindal, Advocate for the petitioner.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Reshabh Bajaj, Advocate and
Ms. Gauri C. Kaushal, Advocate
for the respondents.

SUVIR SEHGAL J.

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') read with the Scheme of Appointment of Arbitrators by the Chief Justice of Punjab and Haryana High Court, 2003, for appointment of a sole Arbitrator.

2. A brief summary of facts leading to the filing of the petition are that the petitioner, a company registered under the Companies Act, 2013, is dealing in petcoke, coal and other allied items. Respondents are the Director/shareholders of the company. At the time of the registration of the company, a Memorandum of Association (MOA)



dated 07.10.2014 Annexure A-1, which was signed by respondent No.1, was submitted to the Registrar of Companies. As some disputes arose inter-se the Directors, respondents No.1 and 2 submitted their resignation letters, Annexure A-6. Petitioner invoked Clause 32 of the MOA vide legal notice dated 04.03.2023, Annexure A-7, and nominated an Arbitrator. By their response dated 18.03.2023, Annexure A-8, sent through a lawyer, respondents informed the petitioner that they have filed a civil suit for declaration and requested them to withdraw the legal notice.

3. Counsel for the petitioner urges that the respondents have committed various acts of omission and commission causing a loss of Rs.32 crores to the company. He submits that as disputes have arisen between the parties, petitioner invoked Clause 32 of the MOA by serving a legal notice and the disputes deserve to be determined by an Arbitrator.

4. Per contra, learned counsel for the respondents has opposed the petition. By making a response filed on behalf of the respondents, he has argued that there is no arbitration clause between the parties and agreement to refer any future dispute in the MOA cannot be treated to be an arbitration agreement under Section 7 of the Arbitration Act.

5. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.



6. Laying down the principles as to what constitutes an arbitration agreement, Supreme Court in **Jagdish Chander versus Ramesh Chander and others (2007) 5 SCC 719** has *inter alia*, observed as under:-

“(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and an willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.”

7. The controversy in the instant case revolves around the interpretation of clause 32 in the MOA, Annexure P-1, which is reproduced hereunder:-

“32. To agree to refer to arbitration any dispute, present or future between the company and any other company, firm, individual or any other body and to submit the same to Arbitration in India or abroad, either in accordance with Indian or any foreign system of law.”

8. Section 7 of the Arbitration Act does not mandate any particular form of arbitration clause. All that it requires is that there must be a consensus between the parties to refer any present or future difference



in connection with their affairs, to arbitration with an intention of settling it through a private tribunal.

9. An examination of Clause 32 reproduced above shows that the intention of the parties, is "to agree to refer to arbitration" any present or future disputes. There is no express intention of referring the dispute to an Arbitral Tribunal, rather the clause exhibits that there is a possibility of the parties consenting to go in for an arbitration. Such a clause cannot be termed as an arbitration agreement as held by the Supreme Court in Jagdish Chander's case (supra). Moreover, the clause merely provides for agreement to refer a dispute or difference with a third party to arbitration. This clause does not provide for sending any internal dispute between the company and its Directors or shareholders for determination to an Arbitral Tribunal. The respondents were the Directors of the petitioner company and even after they have submitted their resignation, they continue to be the shareholders. Therefore, they cannot be said to be governed with the clause reproduced above.

10. Furthermore, MOA, Annexure A-1 does not bear the signatures of respondent No.2 and respondent No.2 and in any case, cannot be made bound by any agreement, if any, arrived at between the parties. This Court, therefore, is of the view that Clause 32 relied upon by the petitioner, cannot be said to constitute an arbitration agreement within the meaning of Section 7 of the Arbitration Act and dispute between them cannot be referred to arbitration.



11. Finding no merit in the petition, it is hereby dismissed with no order as to costs.
12. Pending application, if any, shall stand disposed off.

11.12.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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