



233

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

ARB-368-2022

Date of decision:-03.09.2024

Rakesh Kumar Choudhary

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Fateh Singh Dhillon, Advocate
for the petitioner.

Mr.Anil Bansal, DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant 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.

2. Counsel for the petitioner submits that a concession agreement dated 14.01.2020, Annexure P1, was entered into between the petitioner and the respondents for excavation of minor minerals in Block 1 in District Ropar. He submits that Clause 48 of the agreement provides for appointment of an arbitrator to resolve the dispute between the parties. He submits that the agreement was for the period of 3 years and



233

after the first year, a dispute arose between the parties and by virtue of letter dated 26.08.2020, Annexure P17, respondent agreed to refer it to an arbitrator. The arbitrator entered upon reference vide notice dated 27.08.2020, Annexure P18, and an award has since been passed. Counsel asserts that a dispute arose for the second and third year and by notice dated 14.06.2022, Annexure P34, petitioner invoked the arbitration clause, but the respondents did not appoint the arbitrator. He asserts that the agreement was terminated by order dated 24.08.2024, Annexure P41, which was later set aside by this Court.

3. Upon notice by this Court, written statement has been filed by respondents contesting the petition wherein it has been submitted that the petitioner has a remedy of filing an appeal under Rule 87 of the Punjab Minor Mineral Rules, 2013 against an order passed by the assessing authority. It has been further submitted that as the claim is of more than Rs.10 crores, petition for appointment of arbitrator is not maintainable. Still further, another objection raised by the respondents by placing reliance upon the judgment of the Supreme Court in **M/S N.N. Global Mercentile Pvt. Ltd. Versus Indo Unique Flame Ltd. & others (2023) 7 SCC 1** is that as the agreement is insufficiently stamped, arbitration clause cannot be enforced unless the deficiency in stamp duty is made good.

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

5. On a specific query, State counsel could not point out any assessment order, which is amenable to appeal. Insofar as the objection



233

regarding the maintainability is concerned, State counsel could not refer to any clause in the arbitration agreement, which bars the invocation of arbitration in case the claim is above Rs.10 crores. Counsel for the petitioner asserts that there is no such debarring clause in the agreement. The third objection raised by the respondent simply deserves to be noticed and rejected as the judgment in M/s N.N. Global's case has been overruled by the Supreme Court *In Re : Interplay Between Arbitration Agreements under The Arbitration and Conciliation Act, 1996 and The Indian Stamp Act, 1899* 2024 (6) SCC 1. Concededly, dispute pertaining to the first year of the Concession Agreement already stood referred to an arbitrator. It ill behoves the respondents to oppose the reference of the dispute for the second and third year of the agreement to an arbitrator.

6. For the foregoing reasons, petition is allowed. Mr. Justice (Retd.) Rajiv Narain Raina, a former Judge of this Court, r/o H.No. E/8-03 (GF), DLF - The Valley (Near Amravati Enclave), Pinjore-Kalka Urban Complex, Sector-3, Panchkula-134107, M: 7837049207 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

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

8. Parties will be at liberty to raise all the pleas/defences before the Arbitrator.

9. Needless to mention that all the questions arising between



233

the parties in this matter will remain open for determination in the arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

10. A request letter be sent to Mr. Justice (Retd.) Rajiv Narain Raina alongwith a copy of this order.

03.09.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(SUVIR SEHGAL)
JUDGE