



ARB-371-2023(O&M)

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

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ARB-371-2023(O&M)

Date of decision: 14.11.2024

ABB INDIA LTD

....APPLICANT

Vs.

PATIALA LOCOMOTIVE WORKS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Manish Kumar and
Mr. Yash Pal Gupta, Advocate
for the applicant.

Mr. Vinish Singla, Advocate and
Mr. Alankrit Bhardwaj, Advocate
for the respondent.

JAGMOHAN BANSAL, J (ORAL)

1. Through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of Arbitral Tribunal.

2. The applicant and respondent entered into agreement by way of four different purchase orders. There is Arbitration Clause in the General Conditions of Contract which forms part of purchase orders. As per said Clause, there would be a sole Arbitrator in case of dispute between the parties. The respondent, by way of circular, enjoined that three retired Railway Officers would form Arbitral Tribunal. The applicant served notice dated 29.07.2023 upon respondent invoking Arbitration Clause. The applicant proposed a retired Judge of Supreme Court as an Arbitrator. The respondent did not agree to that. As per the respondent, only retired officials of Railway can be appointed as



3. Mr. Vinish Singla and Mr. Alankrit Bhardwaj, Advocates submit that circular issued by respondent is part of agreement, thus, only retired officials of Railways can be appointed as Arbitrators. The Arbitral Tribunal shall consist of three Members. They are not disputing the Arbitration Clause and dispute between the parties, however, they are disputing composition of Arbitral Tribunal. The Railways have entered into contract with ABB India Ltd., thus, they do not recognize any other entity with whom ABB India Limited has entered into an agreement.

On instructions from Sh. Ramesh Kumar Kaul, Dy. Chief National Manager, Patiala, Mr. Vinish Singla and Mr. Alankrit Bhardwaj, Advocates further submit that this Court may be pleased to constitute an Arbitral Tribunal consisting of three Members, out of which one member should be of technical background and another that of accounts.

4. Counsel for the applicant agrees to the constitution of Tribunal consisting of three members, however, prays that members should be independent and not as per choice of the respondent. He further submits that he leaves it to this Court to nominate three members to constitute an Arbitral Tribunal.

5. In view of recent judgment of Five Judges Bench of Supreme Court in '***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.***', 2024 SCC OnLine SC 3219, the Railways-respondent cannot make unilateral appointment. The appointment in such circumstances needs to be made by High Court or Supreme Court.

6. The Agreement is not disputed between the parties. Service of notice under Section 21 of 1996 Act is also not disputed. The dispute is confined to composition of Arbitral Tribunal.



7. In view of pleadings and arguments of both sides, this Court is of the considered opinion that one technical person, one Chartered Accountant and a retired Judge of Supreme Court should be members of Arbitral Tribunal.

8. Mr. Justice Adarsh Kumar Goel, retired Judge of Supreme Court of India, residing at C-2/24, Safdarjung Development Area, New Delhi-110016, Mobile No.9910213040, Sh. Ashok Kumar Agarwal, retired GM, ICF, residing at E-502, LA Lagune, Sector-54, Golf course Road, Gurugram, HR-122002, Mobile No.9717873000 and Sh. Krishan Vrind Jain, Chartered Accountant, residing at House No. 1139, Block-B, IT City, Sector 82-A, Mohali-160055, Mobile No.9417009490 are hereby appointed as members of Arbitral Tribunal to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned members of Arbitral Tribunal are requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

9. Parties are directed to appear before the learned Arbitral Tribunal on date, time and place to be fixed by the learned Tribunal at its convenience.

10. The members of the learned Tribunal shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended.

11. The learned Tribunal is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

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



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13. A request letter along with copy of this order be sent to Mr. Justice Adarsh Kumar Goel, retired Judge of Supreme Court of India, Sh. Ashok Kumar Agarwal, retired GM, ICF and Sh. Krishan Vrind Jain, Chartered Accountant.
14. Disposed of.
15. In view of statement of both sides, it is hereby clarified that venue/seat of the learned Tribunal shall be at Chandigarh.
16. Pending miscellaneous application(s), if any, shall also stand disposed of.

14.11.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No