

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-376-2022(O&M)
Date of decision:-13.03.2024

M/s Chandigarh Roller Flour Mills Pvt. Ltd.

...Petitioner

Versus

The Punjab State Co-operative Supply and Marketing Federation Ltd.

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Nitin Kaushal, Advocate
for the petitioner.

Mr.Vikas Singh, Advocate
for the respondent.

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 independent Arbitrator to adjudicate the dispute between the parties.

2. Counsel for the petitioner submits that the petitioner entered into an agreement dated 12.01.2022, Annexure P2, with the Punjab State Co-operative Supply & Marketing Federation Ltd., respondent herein, for supply of Whole Wheat Atta. Counsel submits that due to outbreak of Pandemic and change in policies of the Government, a dispute arose between the parties. He submits that various communications were addressed to the respondents and by notice dated 10.08.2022, Annexure P12, petitioner invoked the arbitration clause (Clause No.19) and

259

proposed the name of an Arbitrator. He asserts that despite being served with the notice, respondent did not accept the request.

3. Upon notice of the petition, respondents have appeared and filed a reply contesting the petition. A stand has been taken that an Arbitrator has been appointed by the Managing Director of the Corporation – respondent No.1 vide letter dated 04.10.2022. It has been further submitted that the petitioner has appeared before the Arbitrator.

4. At this stage, counsel for the petitioner submits that by order dated 24.11.2022, this Court had directed that the further proceedings before the Arbitrator shall remain stayed. However, by subsequent order dated 19.01.2023, the said order was modified and it was observed that as the petitioner has neither appeared before the Arbitrator and nor raised any objection, arbitration proceedings may continue but final award be not passed. He submits that upon appearing before the Arbitrator, petitioner moved an application under Section 16 of the Act, which was rejected by the Arbitrator vide order dated 23.06.2023, which is under challenge in the connected writ petition.

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

6. From the narration of the facts, it is evident that the notice, Annexure P12, invoking the arbitration clause was duly served upon the respondent, however, it did not take any action. Petitioner approached this Court for appointment of an arbitrator and notice was issued to the respondents on 30.09.2022. Thereafter, the respondent appointed an arbitrator from the panel maintained by it on 04.10.2022. It has been held by the Supreme Court in **Union of India Versus Bharat Battery**

Manufacturing Co. (P) Ltd., (2007) 7 SCC 684 that once a party files an application under Section 11(6) of the Act, the right of the other party to appoint an arbitrator under the arbitration clause, is extinguished. Therefore, the appointment of the arbitrator made by letter, Annexure P18, is without jurisdiction. Moreover, Supreme Court in **Perkins Eastman Architects DPC and another Versus HSCC (India) Limited, (2020) 20 Supreme Court Cases 760** has held that a party, who is interested in the outcome of the arbitration proceedings can neither himself be an arbitrator nor is he competent to appoint an arbitrator.

7. In view of the above legal position, the prayer made in the petition deserves to be acceded to.

8. Accordingly, petition is allowed. Sh. Gurcharan Singh Saran, District & Sessions Judge (Retd.) , r/o House No. 74, Punjab Judges and Officers Enclave, Sector 77, Mohali , is appointed as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute between the parties.

9. Parties are directed to appear before the Arbitrator on 10.04.2024 at 11:00 A.M. at the address mentioned above or at any other time or place to be fixed by the Arbitrator.

10. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

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

12. Needless to mention, respondents will be at liberty to raise

ARB-376-2022(O&M)

-4-

259

all the pleas before the Arbitrator.

13. Copy of the order be sent to the appointed Arbitrator.

14. Pending miscellaneous application (s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

13.03.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No