

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(136-1)

ARB-196-2018
Date of decision:- 18.04.2024

M/s Parshotam Industries Ltd.

... Petitioner

Versus

Punjab Energy Development Agency (PEDA) and anr

... Respondents

(136-2)

ARB-197-2018

M/s Vivaan Solar Pvt. Ltd.

... Petitioner

Versus

Punjab Energy Development Agency (PEDA) and anr

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Tajender K. Joshi, Advocate
for the petitioner(s) in both the cases.

Mr. N.S.Boparai, Advocate
for the respondent No.1 in both the cases.

Respondent No.2 deleted from array of parties vide order dated
16.04.2024.

SUVIR SEHGAL, J. (ORAL)

1. This order shall dispose of two cases bearing Nos. **ARB-196-2018** titled as “***M/s Parshotam Industries Ltd. Versus Punjab Energy Development Agency (PEDA) and another***” and **ARB-197-2018** titled as “***M/s Vivaan Solar Pvt. Ltd. Versus Punjab Energy Development Agency (PEDA) and another***”.
2. For the sake of convenience, factual position is being noticed from ARB-196-2018.
3. Petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for

appointment of a sole Arbitrator to adjudicate the dispute between the parties.

4. Counsel for the petitioner submits that the petitioner entered into an Implementation Agreement dated 20.03.2015, Annexure P-1, with respondent No.1 and Article 14, thereof, provides for resolution of disputes between the parties by appointment of an Arbitrator. He submits that subsequently, a Power Purchase Agreement dated 31.03.2015, Annexure P-2, was entered into between the petitioner and the Punjab State Power Corporation-respondent No.2, who has been deleted by this Court on his request. Counsel submits that a dispute arose between the petitioner and respondent No.1 and notice dated 17.02.2018, Annexure P-3, was served upon respondent No.1 invoking the Arbitration Clause, however, it has remained unattended.

5. Petition has been contested by respondent No.1 by filing a reply. Counsel representing respondent No.1 has contended that respondent No.2 is a necessary party and in its absence, the dispute cannot be referred to and determined by an Arbitrator. He submits that the agreement, Annexure P-2, with respondent No.2, is an integral part of agreement, Annexure P-1. He has referred to the recitals of both the agreements to support his contention. He submits that deletion of respondent No.2 has changed the entire complexion and it is obligatory for the petitioner to file a fresh petition. It is his argument that the dispute has to be referred to the Punjab State Electricity Regulatory Commission (for short “the Commission”) under Section 86 (1) (f) and other provisions of the Electricity Act, 2003 as both the parties have covenanted to adhere to the provisions of the statute.

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

respective submissions.

7. All the contentions raised by counsel for the respondent No.1 deserve to be considered by an Arbitrator. In so far as the objection pertaining to the jurisdiction of the Commission is concerned, suffice is to notice is that as the petitioner has deleted respondent No.2, which is the licensee, the jurisdiction to adjudicate the dispute no longer lies with the Commission. The judgment of the Supreme Court in Chief General Manager (IPC), Madhya Pradesh power Trading Company Limited and another Versus Narmada Equipments Private Limited, (2021) 14 Supreme Court Cases 548 would not come to the aid of respondent No.1.
8. Accordingly, both the petitions are allowed. Mr. Justice Tejinder Singh Dhindsa (Retd.), a former Judge of this Court, resident of House No. 123, Sector 8, Chandigarh, Mobile Nos. 7837049208 & 9815308888, is requested to act as an Arbitrator to adjudicate the dispute between the petitioner and respondent No.1, subject to compliance of statutory provisions.
9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
10. Liberty is also granted to the parties to raise all the pleas, claims, counter-claims, defences, preliminary objections etc. before the Arbitrator.
11. A request letter alongwith a copy of the order be sent to Mr. Justice Tejinder Singh Dhindsa (Retd.).

18.04.2024

Kamal

(SUVIR SEHGAL)

JUDGE

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