



ARB-43-2023

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

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ARB-43-2023

Date of Decision: 04.02.2025

Uttar Haryana Bijli Vitran Nigam Limited

...Applicant

Versus

W.S. Industries (India) Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Lakshay Mehta, Advocate for the applicant

Mr. Harshvardhan Pandey, Advocate and

Mr. Shashank Aggarwal, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of an Arbitrator.

2. The parties entered into contract. A dispute erupted between the parties. There is an arbitration clause in the aforesaid contract. The execution of contract, arbitration clause therein and service of notice under Section 21 of 1996 Act is not disputed.

3. The parties entered into contract which comprised of mechanism to resolve the dispute between the parties. As per Clause 50 of the contract, in case of dispute the matter at the first instance was required to be referred to Empowered Officer. The contract was executed on 01.10.2013 and it was terminated on 23.01.2015. A dispute erupted between the parties and on the asking of respondent, the matter was referred to Empowered Officer in terms of Clause 50.2 of the contract. For the ready reference,

6. Clauses 50 and 51 of the contract are reproduced as below: -



“50. Settlement of Disputes

- 50.1 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, settled amicably between the parties.*
- 50.2 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of the Contract for the performance of the Works whether during the progress for the Works of after its completion or whether before or after the termination, abandonment or breach, it shall, in the first place be referred to and settled by the empowered officer to be appointed by the Owner, who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to the Owner and the Contractor.*
- 50.3 Unless as hereinafter provided, such decision in respect of any matter so referred shall be final and binding upon the parties until the completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence, whether he or the Owner required arbitration as hereinafter provided or not.*
- 50.4 If after the Empowered Officer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.*
- 50.5 In the event of the Empowered Officer falling to notify his decision as aforesaid within thirty (30) days after being requested aforesaid, or in the event of either the Owner or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty (30) days, as the case may be either party may require that the matters in dispute be referred to arbitration as hereinafter provided.*

51. Arbitration



All matters, question, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or in consequences or relating to this Contract whether or not obligations of either of both parties under this Contract be subsisting at the time of such dispute and whether or not this Contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitration of the MD, UHBVN or an Officer appointed by the MD, UHBVN as his nominee. The Award of the Arbitrator shall be final and binding on the parties to this Contract.

Subject to aforementioned provisions, the provisions of Arbitration & Conciliation Act 1996 and the rules there under and statutory modifications thereof for the time being in force, shall be deemed to apply to the Arbitration proceedings under this Clause.”

4. The Empowered Officer passed Award dated 21.05.2019 (Annexure P-20). As per terms and conditions of the contract, any party could ask for arbitration within 30 days from the decision of Empowered Officer.

5. Learned counsel for the respondent, during the course of hearing, submitted documents disclosing that decision of Empowered Officer was not accepted by the respondent and for the said purpose, proper communication was made which prompted the applicant to initiate arbitration proceedings. The documents are taken on record. Registry is directed to tag the same at an appropriate place.

6. Learned counsel for the respondent submits that he has two-fold objections, namely, maintainability of the application in terms of Section 14 of 1996 Act and limitation in terms of judgment of Supreme Court in **Arif**



7. *Per contra*, learned counsel for the applicant submits that there is no question of claim being *prima facie* time barred because litigation between the parties is pending since 2015. The Empowered Officer passed Award on 21.05.2019 and thereafter, communication was made between the parties. On two occasions, Arbitrator was appointed, thus, there is no question of claim being time barred. With respect to objection *qua* maintainability, he submits that the earlier Arbitrator did not proceed in view of rigour of Section 12(5) of 1996 Act. It is not a case of substitution of Arbitrator, thus, application under Section 11(6) is maintainable.

8. Indubitably, the applicant in January' 2020 appointed a Sole Arbitrator. The respondent appeared before the Arbitrator and preferred an application dated 08.01.2021 under Section 12(5) of 1996 Act seeking declaration of eligibility of the Arbitrator. The Sole Arbitrator vide order dated 27.02.2022 placing reliance on judgment in ***TRF Limited v. Energo Engineering Projects Limited, (2017) 8 SCC 377*** recused from arbitration proceedings.

It shows that appointment of the Arbitrator by applicant was contrary to law and he could not act in terms of Section 12(5) of 1996 Act. The respondent is claiming that it is a case of substitution of Arbitrator. Had the Arbitrator refused to entertain the application of the respondent under Section 12(5), there could be need to substitute the Arbitrator and such power is exercised under Section 14 of 1996 Act. It is a case where at the first instance, the Arbitrator recused and applicant wants appointment of an independent Arbitrator.

Considering the legal and factual position, this Court finds it

appropriate to invoke its jurisdiction under Section 11(6) of 1996 Act.



9. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

10. Mr. Justice Vinod Goel, Former Judge of Delhi High Court, residing at D6 Ground Floor, Green Park Main, New Delhi- 110016, Mobile No.9910384637 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

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

12. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended.

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

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

15. A request letter along with copy of this order be sent to Mr. Justice Vinod Goel.

(JAGMOHAN BANSAL)
JUDGE

04.02.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes