



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

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**ARB-570-2021 (O&M)
Date of Decision:26.11.2025**

Haryana State Electronics Development Corporation Ltd.

.....Petitioner

Versus

Rajan Sehgal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Prateek Mahajan, Advocate and
Ms. Perna Malhotra, Advocate for the petitioner.

Mr. Dushyant Manocha, Advocate (Through V.C.) and
Mr. Amandeep Singh, Advocate for respondents No.1 and 2 .

None for respondent No.3.

JASGURPREET SINGH PURI J.(Oral)

1. As per the report of the Registry, notice issued to respondent No.3 has been received back with the report that wife of respondent No.3 has refused to receive the summons.

2. An order was passed by this Court on 31.07.2025 which is reproduced as under:-

“As per office report, notice sent to respondent No.3 has been received back with a report that wife of respondent No.3 refused to receive the summon.

Learned counsel for respondent Nos.1 and 2 seeks time to file reply and address the arguments.

Adjourned to 18.08.2025.”



3. The present is a petition filed under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator.

4. Learned counsel appearing on behalf of the petitioner, while giving brief facts of the present case submitted that Assisted Sector Agreement was entered into between the petitioner and the respondents, under which the petitioner had invested money in the company floated by the respondents. He submitted that the aforesaid agreement dated 02.05.1996 has been placed on record as Annexure P-1 and the same contains an arbitration clause at paragraph No.43, which is reproduced hereinbelow:-

“43:- All differences and dispute between the parties hereto on any clause or matter herein contained or their respective rights, claims, liabilities hereunder or otherwise, howsoever, in relation to or arising out of this agreement, shall be referred to the sole arbitration of the Commissioner, Finance, Government of Haryana or his nominees, acting as such at the time of reference, whose award shall be final and binding on both the parties, and such arbitration shall be governed by the Indian Arbitration Act, 1940 or any modification or re-enactment thereof for the time being in force.”

5. Learned counsel for the petitioner further submitted that there is neither any dispute regarding existence of aforesaid arbitration clause nor has any such objection been raised by the respondents



regarding the same. He submitted that when disputes arose between the parties, the petitioner invoked the aforesaid arbitration clause which provides that any dispute is to be referred to the sole arbitration of the Commissioner, Finance, Government of Haryana or his nominee. Thus, the mechanism for appointment of arbitrator was clearly stipulated in the aforesaid arbitration clause. Therefore, after the dispute arose, the petitioner issued a notice dated 15.07.2003 (Annexure P-12) through registered A.D. post, specifically invoking the arbitration clause. It was stated in the aforesaid legal notice that an amount was payable to the petitioner, failing which the petitioner would be constrained to refer the dispute between the parties for arbitration in terms of Clause 43 of the aforesaid agreement, at the risk and expense of the respondents. The relevant portion of the aforesaid notice contained in the last paragraph, is reproduced hereinbelow :-

*“I, through this legal notice, finally call upon you to make the payment of **Rs.59,50,191.47**, payable as on 9-6-2003 having calculated with interest @ 19.5% per annum with six monthly rests w.e.f. 10-6-1996 i.e. the date of disbursement of full equity of Rs.16.18 lac to the project by HARTRON, alongwith further interest @ 19.5% p.a. with six monthly rests from 10-6-2003 till the date of actual payment on account of buy-back of equity shareholding of HARTRON in the company within a period of 15 days from the date of receipt of this legal notice, failing which HARTRON will be constrained to refer the dispute between the parties for*



arbitration in terms of Clause 43 of the Assisted Sector Agreement dated 2-5-1996 at your risk and expense.”

6. Learned counsel for the petitioner further submitted that in response to the aforesaid legal notice, the respondents filed a reply to the legal notice vide Annexure P-13 dated 05.08.2003, wherein they denied the amount claimed by the petitioner and in the last paragraph requested the petitioner not to venture into any frivolous litigation and suggested that the petitioner may enter into a one-time settlement in this regard.

7. Learned counsel further submitted that thereafter on the request of the petitioner, the Financial Commissioner & Principal Secretary to the Government of Haryana, Finance Department, vide order dated 09.10.2003 (Annexure P-14), appointed Sh. Ram Niwas, IAS, Special Secretary to the Government of Haryana, Finance Department, as the sole arbitrator to adjudicate upon the claims of the parties and to render the award. Although, the aforesaid arbitrator was appointed in pursuance of the aforesaid clause providing that the arbitrator shall be the Commissioner, Finance or his nominee but he did not commence the arbitral proceedings and ultimately recused himself from acting as an arbitrator vide Annexure P-22 dated 26.03.2008. While referring to the aforesaid letter (Annexure P-22), learned counsel for the petitioner submitted that the appointed Arbitrator had stated that he has been given another assignment as Chief Administrator, HSAMB and is busy and therefore unable to act as an arbitrator and accordingly requested that some other officer may be appointed as an arbitrator. The said



communication was addressed by the Arbitrator to the Managing Director of the petitioner-corporation.

8. Thereafter, the petitioner again requested the Financial Commissioner & Principal Secretary, Finance Department, Haryana, Civil Secretariat, Chandigarh, vide Annexure P-23 dated 09.04.2008 for appointment of another arbitrator because of the earlier arbitrator's recusal. In this way, a fresh arbitrator was appointed who also did not commence the arbitration proceedings. Therefore, the petitioner addressed another letter vide Annexure P-25 dated 21.01.2019 again to the Principal Secretary, Finance Department, Haryana, Civil Secretariat, Chandigarh, stating that since the arbitration proceedings had still not commenced, a request be considered for appointing a retired District & Sessions Judge as an arbitrator to conclude the matter. Pursuant to the petitioner's aforesaid request, Ms. Sofia Dahiya, IAS, Secretary Finance-cum-Advisor, Finance Department, was appointed as the Arbitrator vide letter dated 02.06.2020 (Annexure P-16) for the third time. Although the aforesaid arbitrator initially commenced the arbitration proceedings and a date was fixed, however, she did not proceed further and in this way no further proceedings were held by the aforesaid arbitrator at all. The time period for concluding the arbitration had already expired and the respondents had also filed an application for termination of the mandate of the arbitrator before the Commercial Court, Gurugram, on the ground that appointment of the arbitrator was in violation of Section 12(5) of the Act as the Secretary Finance-cum-Advisor, Finance Department, was an interested person and therefore the appointment of an interested person



was null and void. However, the respondents No.1 and 2 later withdrew the aforesaid application on 15.07.2021. Learned counsel further submitted that in this way, despite appointing different arbitrators three times, the arbitral proceedings could not be commenced by any of them. He submitted that the present petition has been filed seeking appointment of a fresh, independent and impartial sole arbitrator by this Court. Learned counsel prayed that a retired Judge may be appointed as the sole arbitrator to adjudicate the disputes between the parties.

9. On the other hand, Mr.Dushyant Manocha, appearing through V.C. and Mr. Amandeep Singh, Advocate, appearing physically on behalf of respondents No.1 and 2, submitted that the existence of Clause 43 and the aforesaid agreement between the parties is not in dispute. However, he has raised some objections to the present petition. Firstly, the first arbitrator was appointed by the Financial Commissioner & Principal Secretary to the Government of Haryana, Finance Department vide Annexure P-12 but a proper notice was not served for invocation of the arbitration clause although the respondents No.1 and 2 had filed a reply to the same vide Annexure P-13. According to him, in the aforesaid legal notice, it was only stated that a request was made to the respondents to pay the money, failing which the petitioner would be constrained to refer the dispute between the parties for arbitration in terms of Clause 43 and in this way, the invocation of notice for arbitration was not in clear terms because it was incumbent upon the petitioner to have named the arbitrator and to have specifically stated that they were invoking the arbitration clause and therefore, the arbitrator could not have



been appointed. Secondly, appointment of the first two arbitrators who were earlier appointed was not within the knowledge of the respondents and the respondents were not put to notice regarding the same. However, with regard to the 3rd arbitrator, namely Ms. Sofia Dahiya, IAS, Secretary Finance-cum-Advisor, Finance Department to the Finance Department, they were put to notice but they had moved an application before the Commercial Court, Gurugram, for termination of the mandate of the arbitrator in view of Section 12(5) of the Act. However, thereafter, the respondents No.1 and 2 withdrew the said application from the Commercial Court, Gurugram. He submitted that, in this way, now a fresh arbitrator cannot be appointed by this Court. Thirdly, it is submitted that the present petition under Section 11 of the Act, is barred in view of the fact that after the 2015 amendment to the Act, no person who is an “interested person” can be appointed as an arbitrator and in the present case the arbitrator to be appointed as per the aforesaid Arbitration Clause is an interested person because he is a nominee of the Government and therefore cannot be appointed as an arbitrator and his appointment is barred under Section 12(5) of the Act. He further objected on the ground of delay in filing of the present petition under Section 11 of the Act as the limitation period for filing the same is within three years and the present petition has been filed beyond three years.

10. Learned counsel for respondents No.1 and 2 also referred to a judgment of Delhi High Court in *Alupro Building Systems Pvt. Ltd. Vs. Ozone Overseas Pvt. Ltd. 2017 SCC OnLine Del 7228* to contend that the



aforesaid notice for invocation of arbitration clause in the present case was defective in nature.

11. I have heard learned counsels for the parties.

12. The existence of an agreement between the parties as well as the arbitration clause which has been reproduced as above, is not in dispute. It is also not in dispute that three arbitrators were appointed on three different occasions. However, learned counsel for respondents No.1 and 2 has raised various objections to the prayer of the petitioner for appointment of an arbitrator under Section 11 of the Act.

13. Learned counsel appearing on behalf of respondents No.1 and 2 has raised first objection that when the first arbitrator was appointed by the Financial Commissioner & Principal Secretary, Finance Department, Haryana, Government of Haryana, proper notice was not served for invocation of the arbitration clause vide Annexure P-12, even though the respondents themselves filed a reply vide Annexure P-13. He also referred to a judgment of Delhi High Court in *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd. (supra)* to contend that the aforesaid notice issued by the petitioner, was required to be in compliance with Section 21 of the Act but the same was defective as it was not in accordance with Section 21 of the Act. The aforesaid argument raised by learned counsel for respondents No.1 and 2 can be tested on the basis of relevant portion of the legal notice (Annexure P-12) as reproduced above. A perusal of the notice shows that it was served upon the respondents by way of registered A.D. and constituted a legal notice, calling upon the respondents to pay a certain sum of money, quantified in the notice,



within a period of fifteen days. It was further stated that in default of such payment, the petitioner would be constrained to refer the dispute between the parties for arbitration in terms of Clause 43 of the Assisted Sector Agreement. A perusal of Clause 43 would show that method of appointment of the sole arbitrator has been mentioned wherein it is provided that in case of any dispute between the parties, the same shall be referred to the sole arbitration of the Commissioner, Finance, Government of Haryana or his nominee. In other words, the method of appointment of a sole arbitrator is itself mentioned in the aforesaid arbitration clause and by virtue of the agreement between the parties as contained therein, the matter was to be referred to the Commissioner, Finance, Government of Haryana. Therefore, there was no need to specifically name any arbitrator, as contended by learned counsel for respondents No.1 and 2. The respondents No.1 and 2 filed a reply to the aforesaid notice vide Annexure P-13, which would show that the notice was duly served upon them. On the basis of the same the first arbitrator namely Sh. Ram Niwas, IAS, was appointed by the Financial Commissioner and Principal Secretary, Finance Department, Haryana, Government of Haryana, as the sole arbitrator vide Annexure P-14 dated 09.10.2003. After the first arbitrator recused himself, a second arbitrator was appointed again by the Financial Commissioner and Principal Secretary, Finance Department, Haryana, Government of Haryana. The second arbitrator also recused himself, and as per learned counsel for the parties, no arbitration proceedings had commenced before him. Thereafter, a third arbitrator was appointed by the same authority on 02.06.2020 vide Annexure P-16. Although the third



arbitrator initially fixed one date for commencing arbitration proceedings but the same could not commence. After the aforesaid arbitrator was appointed for the third time, respondents No.1 and 2 filed an application before the Commercial Court, Gurugram, for termination of the mandate of the arbitrator on the ground of infringement of Section 12(5) of the Act, citing conflict of interest.

14. The law regarding the permissibility and validity of unilateral appointment of an arbitrator, particularly after the 2015 amendment to the Act (w.e.f. 23.10.2015), is well-settled. An arbitrator who has a direct interest and is appointed unilaterally by one of the parties is in conflict with the provisions of Section 12(5) of the Act. Therefore, even if the respondents No.1 and 2 had not filed an application for termination of the mandate, the same would have been contrary to Section 12(5) of the Act, as it involved a conflict of interest because the arbitrator was appointed by the Government and the petitioner is a public sector undertaking. Once the petitioner is a public sector undertaking pertaining to electronics development, which is financed by the Department of Finance, the Additional Chief Secretary to the Government of Haryana, Finance Department, could not have appointed an arbitrator unilaterally, particularly when Ms. Sofia Dahiya, who was appointed for the third time, was working as IAS, Secretary Finance-cum-Advisor, Finance Department. That was the reason why the respondents No.1 and 2 themselves had filed an application for termination of the mandate on the ground of conflict of interest under Section 12(5) of the Act. Therefore, the objection taken by learned counsel for respondents No.1 and 2 that the



notice (Annexure P-12) was not in accordance with law, is not sustainable. It was not a case where an option was given to any of the parties to appoint an arbitrator so that the party serving the notice could appoint the arbitrator. Rather, it was a case where the arbitrator was to be appointed in accordance with the procedure agreed between the parties, whereby the State Government would make the appointment. However, it is a different matter that the same would have been contrary to Section 12(5) of the Act. In view of the aforesaid, this Court is of the view that there was no defect in the aforesaid notice (Annexure P-12), to which a reply was filed by respondents No.1 and 2 and no objection was taken by them in the reply that the notice was defective in nature and at this stage the aforesaid argument is unsustainable particularly when not only once but three times three different arbitrators were appointed pursuant to the said notice and in view of these facts plea of a defective notice pales into insignificance.

15. So far as the second argument raised by learned counsel for respondents No.1 and 2 is concerned that when the first two arbitrators were appointed, the same was not within the knowledge of the respondents and they were not put to notice, the same cannot be sustained in view of the fact that when the third arbitrator, namely Ms.Sofia Dahiya, was appointed, the respondents were put to notice and rather they themselves filed an application before the Commercial Court, Gurugram, for termination of the mandate of the aforesaid arbitrator. Therefore, this argument as well cannot be sustained.



16. So far as the third objection raised by learned counsel for respondents No.1 and 2, that the present petition under Section 11 of the Act, filed in the year 2021, is barred by limitation, is concerned, the same is also not sustainable. This is in view of the fact that the first arbitrator was appointed only after a notice (Annexure P-12) was served upon the respondents, who had replied to the said notice but the first arbitrator recused himself and thereafter the subsequent two arbitrators who were appointed in succession could also not commence the arbitration proceedings. Therefore, there is no delay in filing the present petition under Section 11 of the Act. Had it been a case that notice was served upon the respondents and no arbitrator was appointed and the parties filed an application under Section 11 of the Act beyond the period of three years, it would have been hit by limitation. However, the facts and circumstances of the present case are different. When a notice was issued vide Annexure P-12, which was responded to by the respondents No.1 and 2, an arbitrator was appointed but the arbitrator could not continue. Thereafter, two more arbitrators were appointed, who also could not continue. Therefore, the present petition under Section 11 of the Act would certainly be maintainable and would not be hit by limitation because the argument of learned counsel for respondents No.1 and 2 is that although arbitrators were appointed but they could not commence the arbitral proceedings because of recusal by first two arbitrators and conflict of interest. Therefore the aforesaid argument is also not sustainable.



17. A reference was made by learned counsel for respondents No.1 and 2 to a judgment of Hon'ble Delhi High Court in *Alupro Building Systems Pvt. Ltd. Vs. Ozone Overseas Pvt. Ltd. (supra)* to contend that the parties must have invoked the arbitration clause by specifically stating that since there has been a breach of contract, one of the parties is therefore now invoking the arbitration clause. However, a perusal of the aforesaid judgment would show that it is distinguishable on facts and circumstances of the present case. Present is not a case wherein the petitioner has not invoked the arbitration clause by not mentioning the name of the arbitrator. It is a case where the arbitral mechanism, the method of appointment of an arbitrator and the arbitrator who was to be appointed were already mentioned in the aforesaid Clause No.43 which has been reproduced above. Therefore, there was no occasion for the petitioner to have proposed any arbitrator. Accordingly, the aforesaid judgment would be distinguishable from the facts and circumstances of the present case

18. Apart from the above, when all the three arbitrators who were earlier appointed by Financial Commissioner & Principal Secretary, Finance Department, Government of Haryana and they were working in the Finance Department and the petitioner is a State Government Undertaking, there would certainly be a conflict of interest and therefore the aforesaid arbitrators could not have been appointed especially after 2015 amendment to the Act.

19. In view of the aforesaid facts and totality of circumstances, the present petition is hereby allowed. Hon'ble Mr. Justice Amol Rattan



Singh (retired), resident of House No.363 Sector-2, Panchkula (Mobile No.9814105596), Email: amolrattansingh@yahoo.co.in, is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

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

21. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

22. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

23. A request letter alongwith a copy of the order be sent to Hon’ble Mr. Justice Amol Rattan Singh (retired).

24. Parties shall be at liberty to raise all the pleas which are permissible to them in accordance with law before the learned Arbitrator.

26.11.2025
shweta

(JASGURPREET SINGH PURI)
JUDGE

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