



2025:DHC:1419



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 2059/2024**

Date of Decision: **03.03.2025**

IN THE MATTER OF:

THINK GAS LUDHIANA PVT LTD

.....Petitioner

Through: Mr. Abhishek Gupta, Mr. Udit Kr.
Thakur and Mr. Rajeev Kr. Yadav,
Advs.

versus

M K AGGARWAL FINISHING FACTORY & ANR.

.....Respondents

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking the appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under the Gas Supply Agreement dated 28.04.2022
2. The office report indicates that the service of the notice has been affected by email, which is recorded in the agreement. In addition, the service of notice has also been affected through WhatsApp as well as registered posts. The affidavit of service indicates that while the email was

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successfully delivered, the speed post has been returned unserved with the note 'refused'.

3. In view of the aforesaid, the service on all the respondents stand complete. The Court, therefore, is left with no option but to proceed ex parte against the respondents.

4. The facts of the case would indicate that a Gas Supply Agreement dated 28.04.2022 was entered between the petitioner and M.K. Aggarwal-respondent No.1 through its partnership firm as respondent No.2 for supply of natural gas by the petitioner to the respondents for use at their premises at Lakshita Cluster Colony, Machhiwara Road, Kohara, Ludhiana, Punjab-141003. The billing cycle commenced and the petitioner issued the invoices from time to time. The respondents defaulted in the payment of the amount against the invoices. The petitioner notified the respondents that the payments by the respondents against PNG supply invoices are being delayed continuously, which has resulted in an outstanding payment of Rs.14,77,515.62/-.

5. The petitioner, thereafter, appears to have sent various emails, and as per the case of the petitioner, the respondents' default in payment constituted breach of obligations under Clause 2.12 of the Gas Supply Agreement and thereby, the petitioner disconnected the PNG supply on 03.06.2024. The respondents thereafter requested the petitioner for continuation of the gas supply and assured payment, *vide* communication dated 11.06.2024.

6. However, despite the aforesaid assurance, the respondents did not make the payment of the outstanding amount which compelled the petitioner to invoke the bank guarantee of Rs.6,13,169/- and as per the case of the

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petitioner, the balance outstanding amount of Rs.12,07,894/- stood recoverable against the respondents as on 30.09.2024. The petitioners, thereafter, issued a notice of Arbitration under section 21 of the 1996 Act as per Clause 2.39 of the Gas Supply Agreement and since the notice was not acted upon by the respondents, the petitioner approached this Court seeking appointment of an Arbitrator.

7. The Court has perused Clause 2.39 of the Gas Supply Agreement, the same reads as under:-

*“2.39 Arbitration: Any dispute or difference arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination ("**Dispute**"), if not settled by mutual discussions and negotiations between the Parties within 10 (ten) calendar days of service of a notice of the dispute or difference by any Party to the other Party, shall be referred to and finally resolved by arbitration conducted in accordance with the Arbitration and Conciliation Act, 1996 as amended or reenacted from time to time. The arbitral tribunal shall consist of 1 (one) arbitrator to be selected by the Buyer from a list of three candidates provided to the Buyer by the Seller. In case the Buyer fails to select one of the three candidates provided to the Buyer within 10 (ten) calendar days of the date of receipt of the list from the Seller, then the first such candidate shall be deemed to be the arbitrator and will constitute the arbitral tribunal. The seat of the arbitration shall be Delhi. The language of the arbitration shall be English.”*

8. Since there exists an arbitration clause in the agreement to be invoked in the event of a dispute having arisen between the parties, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for. The said legal position has been elucidated upon in the judicial pronouncements of the Supreme Court in the decisions of *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,¹

¹ (2020) 20 SCC 760



TRF Limited v. Energo Engineering Projects Ltd.,² Bharat Broadband Network Limited v. United Telecoms Limited,³ and Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899⁴.

9. It is, thus, seen that the dispute requires to be adjudicated as per Clause 2.39 of the Agreement in question, and accordingly, the Court appoints Mr. Sanyam Khetarpal (phone. No. +91 9873674225, Email – sanyam@khetarpal.co.in) as the Sole Arbitrator to adjudicate the dispute between the parties.

10. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, the requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996.

11. The Sole Arbitrator shall be entitled to fee in accordance with Schedule IV of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

12. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

13. The parties shall share the arbitrator's fee and the arbitral cost, equally.

14. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



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their merits, in accordance with law.

15. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

MARCH 3, 2025/DPA/DP

Click here to check corrigendum, if any

⁴ In re, 2023 SCC OnLine SC 1666.