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

**ARB No.294 of 2018 (O&M)
Date of Decision: 07.09.2022**

M/s Singla Trading Company Bilaspur

.....Petitioner

Vs

Managing Director CONFED and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Robin Dutt, Advocate
for the petitioner.

Mr. Harish Bansal, Advocate and
Mr. Dinesh Nagar, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for the appointment of an independent sole Arbitrator.

[2]. Petitioner has entered into an agreement with CONFED, Yamunanagar for the purpose of milling of paddy as per Clause 10 of Haryana Rice Procurement (Levy) Order 1985.

[3]. Bare perusal of Clause-19 of the Agreement would

show that the agreement shall remain in force upto (blank) or clearance of dues, whichever is later. There is an Arbitration Clause-23 in the agreement for the disputes arising out of interpretations or in any manner touching the agreement. Such disputes are referable to the sole Arbitrator of the Managing Director First Party. After the Amendment Act, 2015, departmental person cannot be appointed as sole Arbitrator. The appointment of official Arbitrator *de hors* the mandate of law in terms of Amendment Act of 2015 is illegal and in such circumstances, new independent Arbitrator has to be appointed.

[4]. Learned counsel for the petitioner relies upon **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**; **Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755**; **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1**. Para No.54 of **TRF Limited vs. Energo Engineering Projects Limited case (supra)** reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual

respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[5]. *Per contra*, learned counsel for the respondent submits that the claim is time barred. Arbitration clause was allegedly invoked only by way of legal notice dated 20.06.2018.

[6]. In my considered opinion, in view of Clause-19 of the Agreement, there is no specific time prescribed for culmination of the agreement in question. The dispute is in respect of clearance of dues and such aspect is also covered under Clause-19 of the Agreement. The agreement shall remain in force either upto a particular date, which is missing altogether or till clearance of dues, which is under dispute. The plea of the respondent can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official

Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid cited case laws.

[7]. Keeping in view the facts and circumstances of the case, I hereby appoint Mr. G.S. Bajwa, Advocate, House No.319, Advocates Society, Sector 49-A, Chandigarh, Contact Nos.0172-2674739, 9814103628, bajwags58@yahoo.co.in as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[8]. The Arbitrator is requested to complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the 4th Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent No.1 in equal proportion.

[9]. The venue of the Arbitration shall be the place as to be disclosed by the Arbitrator according to his convenience.

[10]. A copy of this order be dispatched to the Arbitrator at the following address:-

Mr. G.S. Bajwa, Advocate
House No.319, Advocates Society,
Sector-49-A, Chandigarh.
Contact Nos.0172-2674739, 9814103628,
bajwags58@yahoo.co.in

[11]. Petition stands disposed of accordingly.

07.09.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No