

Arbitration Case No. 545 of 2021

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 545 of 2021
Date of decision: 9th January, 2023

Satguru Biofuel Limited

Petitioner

Versus

Shri Parth Petrochem

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yash Pal Gupta, Advocate for the petitioner.
Mr. Shakti Mehta, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The brief facts are that the parties entered into an agreement/Memorandum of Understanding on 12.12.2020 for supplying and commissioning of Biofuel Plant for the petitioner. The agreement provided a mechanism for resolving the disputes through arbitration. The clause is reproduced below:

“ARBITRATION/MEDIATION DISPUTE RESOLUTION

The parties of this MOU agree that the dispute if arises amongst them, the same shall be resolved amicably and if there is no scope of settlement, the matter shall be referred to the Sole Arbitrator and the proceedings shall be as per the provisions of the Arbitration and Conciliation Act, 1996 as amended as on date and place of seat of the Arbitration shall be at

Chandigarh.”

There was dispute between the parties with regard to the supply of material and costing charges. A legal notice was served on 29.7.2021 and thereafter, notice dated 2.9.2021 was issued for appointing the arbitrator. The respondent gave reply dated 23.9.2021 stating that recovery suit has been filed by the respondent against the petitioner.

Learned counsel for the respondent submits that there is a recovery suit pending. He further submits that the MOU is un-stamped. He relies upon the decision of the Supreme Court in *SMS Tea Estates Pvt. Ltd. v. M/s Chandmari Tea Co. Pvt. Ltd., (2011) 14 SCC 66.*

Learned counsel for the petitioner submits that the decision in *SMS Tea Estates Pvt. Ltd.'s case (supra)* was over-ruled in *M/s N. N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Limited and others, (2021) 4 SCC 379.*

Filing of recovery suit by the respondent is an indicator that there is a counter-claim by the respondent. There is clause for arbitration in MOU, the counter-claim can be dealt with by the arbitrator.

The contention that the agreement is un-stamped at this stage is of no avail to the respondent in view of the law laid down by the Supreme Court in *M/s N. N. Global Mercantile Pvt. Ltd.'s case (supra)*. The citation with approval of *M/s Garware Wall Ropes Ltd. v. Coastal Marrine Construction and Engineering Ltd., (2019) 9 SCC 209* in *Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC* has been referred to a larger Bench in *M/s N. N. Global Mercantile Ltd.'s case (supra)* but it cannot be lost sight that the reference was made after over-ruling the earlier decision in *M/s SMS Tea Estates Pvt. Ltd.'s case (supra)*.

Needless to say that in case need so arises, the issue of un-stamped document relied for arbitration can be raised in the arbitration proceedings at an appropriate stage.

As per clause of MOU, the seat of the arbitrator has to be at Chandigarh.

The petition is accordingly disposed of by appointing Mr. Justice R. P. Nagrath, a former Judge of this court, as the sole arbitrator subject to declaration to be made by him under Section 12 of the Act with

regard to his independence and impartiality to settle the dispute between the parties.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Copy of the order be sent to the appointed arbitrator.

**[AVNEESH JHINGAN]
JUDGE**

9th January, 2023

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |