

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

Arbitration Case No. 112 of 2012

Date of decision:-20.09.2013

M/s Knight Detective & Security Services Pvt. Ltd.

...Petitioner

Versus

Axis Bank Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE

Present: Mr. Atul Lakhanpal, Senior Advocate,
with Mr. R.S. Chahal, Advocate,
for the petitioner.

Mr. Y.R. Mangla, Advocate,
with Mr. Deepak Aggarwal, Advocate,
for the respondent.

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SANJAY KISHAN KAUL, C.J. (ORAL)

The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 emanates from the agreement dated 11.05.2005 in terms whereof the petitioner had agreed to provide security services to the respondent/bank. This agreement contains clause 21 as the arbitration clause. The agreement and the arbitration clause are undisputed by the respondent.

The disputes arise from the fact that certain alleged discrepancies in the cash collected by the respondent/bank from the office of the Excise and Taxation Commissioner, Patiala, were noticed during departmental audit which resulted in an FIR being registered on 21.01.2010 under Sections 409, 420 and 120-B of the Indian Penal Code. Another FIR was registered on 26.01.2010. The financial burden of these was sought to be put on the respondent, but the same is sought to be put on the petitioner which the petitioner seeks to deny.

The only defence pleaded by learned counsel for the respondent emanates from the letter dated 12.04.2010 (Annexure P4) of the petitioner where the petitioner has stated as under:-

“The company has resolved that we have no objection to deposit the amount of Rs. 29,99,859/- and any other claims or interest as levied with the bank and right to protest till such time the case is settled and the recovery is made as per the process of law. The said amount shall be deposited with the bank in five equal monthly installments of Rs. 6 lacs each w.e.f. 15.04.2010. We also understand that if any recovery is made after the settlement by the department or court, the amount so recovered shall be refunded to this company.”

It is the submission of the learned counsel for the respondent that in fact cheques were issued for this amount, some of the cheques bounced, which had resulted in proceedings under Section 138 of the Negotiable Instruments Act, 1881 and in the quashing proceedings the petitioner agreed to make good the cheque amount. It is not in dispute that the aforesaid amount has been deposited with the respondent and the respondent states that in turn they have deposited the amount with the government authorities. The question which arises for consideration is as to whether this was the final settlement arrived at inter se the parties or whether the amount deposited by the petitioner was by way of security subject to the final claim being adjudicated upon.

A reading of the aforesaid paragraph shows that the same is in the nature of security. The dispute which the petitioner seeks to raise is as to whether in the given factual matrix they are liable to pay this amount to the respondent which dispute is clearly covered by the arbitration clause.

The petitioner issued a notice seeking appointment of an arbitrator on 30.05.2012 (Annexure P8), but to no avail.

In view of the aforesaid facts and circumstances, disputes have arisen which are liable to be settled inter se the parties as per the arbitration clause.

Learned counsels for the parties propose that only a single arbitrator may be appointed with arbitration proceedings to be held at Patiala. Accordingly, Mr. Gurdev Singh, District & Sessions Judge (Retired), H. No. 408, Anand Nagar-A, Tripuri, Patiala, is appointed as the sole arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

The fee of the arbitrator shall be as per the Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011.

The petition is accordingly allowed leaving the parties to bear their own costs.

A copy of the order be sent to the arbitrator.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

20.09.2013

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