

Arbitration Case No. 583 of 2021 and connected case [1]

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

Date of decision: 3rd March, 2023

(1) Arbitration Case No. 583 of 2021

Chaudhary Charan Singh, HAU Hissar.

Petitioners

Versus

M/s Astron Solpower Pvt. Ltd. and another

Respondents

(2) Arbitration Case No. 584 of 2021.

Chaudhary Charan Singh, HAU, Hissar

Petitioner

Versus

M/s Astron Solpower Pvt. Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shreenath A. Khemka, Advocate for the petitioner.
Ms. Neha Sonawane, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of the above mentioned two petitions as the issue involved therein is common.

2. For the sake of convenience, the facts are being taken from FAO No. 583 of 2021.

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

4. The parties entered into an agreement for installation, commissioning and operation of Integrated Solar Power Based Hi-tech

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Green House. Clause 35 of the general terms and conditions provided for dispute resolution through arbitration.

5. There was a dispute between the parties and the petitioner served notice dated 1.9.2021 under Section 21 of the 1996 Act. The needful having not been done, the present petitions were filed.

6. The dispute in the present cases are that the unilateral appointment of Justice Rajesh Tandon, former Judge of Uttarakhand High Court by the respondents is illegal.

7. The contention of learned counsel for the petitioner is that the arbitrator was to be appointed by mutual consent.

8. Learned counsel for the respondents submits that if aggrieved of appointment of arbitrator by the respondents, the petitioner has remedy under Sections 12 and 13 of the Act.

9. Learned counsel for the petitioner relies upon the decision of the Supreme Court in ***Walter Bau AG, Legal Successor of the original contractor v. Municipal Corporation of Greater Mumbai and another, (2015)3 SCC 800.***

10. As per clause 35 of the agreement, the arbitrator had to be appointed with mutual consent whereas the appointment was made unilateral by the respondents. A specific objection was raised by the petitioner to the appointment of the arbitrator.

11. *Ex facie*, the appointment of arbitrator by the respondents is not in accordance with the procedure agreed between the parties, in facts and circumstances of the case the existence of an alternative remedy shall not impede exercise of jurisdiction under Section 11(6) of the Act.

12. The Supreme Court in *Walter Bau AG, Legal Successor of the original contractor's case (supra)* held:

“9. While it is correct that in *Antrix (supra)* and *Pricol Limited (supra)*, it was opined by this Court that after appointment of an Arbitrator is made, the remedy of the aggrieved party is not under Section 11(6) but such remedy lies elsewhere and under different provisions of the Arbitration Act (Sections 12 and 13), the context in which the aforesaid view was expressed cannot be lost sight of. In *Antrix (supra)*, appointment of the Arbitrator, as per ICC Rules, was as per the alternative procedure agreed upon, whereas in *Pricol Limited (supra)*, the party which had filed the application under Section 11(6) of the Arbitration Act had already submitted to the jurisdiction of the Arbitrator. In the present case, the situation is otherwise.

10. Unless the appointment of the arbitrator is *ex facie* valid and such appointment satisfies the Court exercising jurisdiction under Section 11(6) of the Arbitration Act, acceptance of such appointment as a *fait accompli* to debar the jurisdiction under Section 11(6) cannot be countenanced in law. In the present case, the agreed upon procedure between the parties contemplated the appointment of the arbitrator by second party within 30 days of receipt of a notice from the first party. While the decision in *Datar Switchgears Ltd. (supra)* may have introduced some flexibility in the time frame agreed upon by the parties by extending it till a point of time anterior to the filing of the application under Section 11(6) of the Arbitration Act, it cannot be lost sight of that in the present case the appointment of Shri Justice A.D. Mane is clearly contrary to the provisions of the Rules governing the appointment of Arbitrators by ICADR, which the parties had agreed to abide in the matter of such appointment. The option given to the respondent Corporation to go beyond the panel

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submitted by the ICADR and to appoint any person of its choice was clearly not in the contemplation of the parties. If that be so, obviously, the appointment of Shri Justice A.D. Mane is non-est in law. Such an appointment, therefore, will not inhibit the exercise of jurisdiction by this Court under Section 11(6) of the Arbitration Act.”

13. The petitions under Section 11 of the 1996 Act are disposed of by appointing Mr. Justice Inderjit Singh, former Judge of this court, H. No. 497, IAS IPS Society, New Chandigarh as sole arbitrator.

14. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

15. The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the 1996 Act.

16. 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.

17. Since the main case has been disposed of, pending applications, if any, stand disposed of.

18. Copy of the order be sent to the appointed arbitrator.

19. Photocopy of the order be placed on the file of connected petition.

**[AVNEESH JHINGAN]
JUDGE**

3rd March, 2023

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