

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

ARB No. 280 of 2018 (O&M)
Date of Decision: 15.11.2022

G.M.FABRICATORS

.....Petitioner

Vs

RAMA INDUSTRIES LTD. AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.S.S.Narula, Advocate
for the petitioner.

Mr.Rahul Sharma, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

CM No.14493-CII-2022

This is an application for placing the additional documents i.e. Annexures P-7 to P-15 on record of this case.

Learned counsel for the respondent No.1 has no objection to the aforesaid application.

In view of above, this application is allowed.
Additional documents are taken on record.

ARB No. 280 of 2018

The present petition has been filed under Section

11(6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of an Arbitrator.

During the course of arguments, learned counsel for the petitioner submits that keeping in view the amount involved, sole arbitrator be appointed in place of Arbitral Tribunal. Perusal of the record would show that the respondent No.1 is a limited company and was declared as a Sick Industrial Unit as per the scheme of “The Sick Industrial Companies (Special Provisions) Act, 1985. The petitioner is one of the creditors and its name was shown in column No.6 of the list i.e. Sundry Creditors for Services with due amount of Rs.10.58 lacs. The scheme of creditors was published in terms of Section 18 of the Act and the same was approved vide order dated 30.09.2013. The petitioner is a normal creditor and was entitled to 25% of its claim. On calculation, an amount of Rs.2,64,419.75 paise has been credited to the account of the petitioner.

Learned counsel for the petitioner submitted that the petitioner has accepted the aforesaid amount of Rs.2,64,419.75 paise under protest. Initially, Arbitral Tribunal comprising of Mr. J.S.Ahluwalia (Retd. Air Comdr.), Mr.C.S.Baweja and Mr.K.Deshmukh was constituted to decide the dispute between the parties. Out of the aforesaid three Arbitrators, Mr.K.Deshmukh did not participate in the arbitration proceedings. The award was passed by the remaining two arbitrators. The said award was challenged under Section 34 of the Arbitration

and Conciliation Act, 1996. Since the objection petition has been accepted by the Additional District Judge, therefore, the only issue pending between the parties is to get an arbitrator appointed.

Learned counsel for the petitioner further submitted that initially the objections filed by the respondent No.1 were dismissed by the Additional District Judge, Patiala on 18.09.2012. Respondent No.1 remained unsuccessful before the High Court in FAO No.5989 of 2012, which was dismissed on 09.11.2012. Respondent No.1 filed SLP (C) No.8523 of 2013 and that was ultimately converted into Civil Appeal No.5410 of 2015 and was allowed vide order dated 13.07.2015 .

Learned counsel for both the parties agree that restoration of objection petition was the real intention of the order dated 13.07.2015 and that was in fact implemented also before the Additional District Judge, Patiala, when the Additional District Judge, Patiala took cognizance of the objection petition on merits and accepted the same in favour of respondent No.1 vide order dated 06.02.2017.

In view of the aforesaid order dated 06.02.2017, the case has been remanded back to the Arbitrator. Owing to inaction in appointing the third arbitrator, the present petition came to be filed by the petitioner.

The factual matrix of the case are not in dispute. All the pleas can be raised before the Arbitrator. Since respondent

No.1 is not aggrieved by the order dated 06.02.2017, therefore, the only issue is whether Arbitral Tribunal is to be appointed to arbitrate the dispute of Rs,10.58 lacs or the sole arbitrator is to be appointed.

Learned counsel for the respondent No.1 further submitted that there is no subsistent dispute after implementation of the scheme under "The Sick Industrial Companies (Special Provisions) Act, 1985.

In my considered opinion, all these facts can adequately be projected and considered by the Arbitrator in due course.

In view of aforesaid, I hereby appoint Sh.Mohinder Pal Satija CA, Satija & Co. Chartered Accountants, SCO 842, 1st Floor, Kalka Road, Manimajra, Chandigarh (mobile: 9815153030 & 9988859644) as the sole Arbitrator, to resolve the dispute/difference between the parties. The claim of the petitioner shall, however, be subject to final adjudication of the arbitrator.

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.

The Arbitrator would 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 IVth Schedule of the Act as amended from time to time. The fee shall be equally shared by the parties.

The venue of the Arbitration proceedings shall be the place to be disclosed by the Arbitrator as per his convenience.

A copy of this order be dispatched to the Arbitrator at the following address:-

Sh.Mohinder Pal Satija CA, Satija & Co.
Chartered Accountants, SCO 842, 1st Floor,
Kalka Road, Manimajra, Chandigarh (mobile:
9815153030 & 9988859644).

(RAJ MOHAN SINGH)
JUDGE

15.11.2022

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whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no