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

**ARB No.94 of 2021 (O&M)
Date of Decision: 01.09.2022**

K.R FOODS LIMITED

.....Petitioner

Vs

**PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION**

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sushant Kareer, Advocate for
Mr. Aditya Jain, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') as the respondent has failed to appoint the Arbitrator within the time prescribed.

[2]. Legal notice dated 22.09.2020 was served on the respondent for payment of outstanding amount, but the respondent has not complied with. Further notice dated 30.12.2020 was also sent to the respondent for appointment of

Arbitrator and proposed the name of Sh. Saroj Kumar Mohanty to which respondent neither agreed nor consented to.

[3]. The contract agreement as per clause 24 has a redressal mechanism. Both the parties were required to attempt in good faith to resolve the differences according to said clause.

[4]. Learned counsel for the petitioner submits that according to work agreement dated 06.08.2019, the total anticipated requirement of Markfed which was quoted as 18000 MT per annum was allocated to the petitioner as an L1 supplier. Petitioner is one of the leading manufacturer of Vanaspati and is having a state of art manufacturing facility at B-16, Bulandshahr Road, Industrial Area, Site-1, Ghaziabad, U.P.

[5]. The dispute arose between the parties as regards the claim of the petitioner. Petitioner has invoked the arbitration clause by issuing a legal notice dated 22.09.2020 calling upon the respondent to pay a sum of Rs.21,01,390/- along with a sum of Rs.9,67,852/- (inclusive of GST towards packing material). Petitioner has also claimed compensation and damages for the loss of revenue suffered by the petitioner due to breach of obligation arising out of the contract agreement. In this way, total claim of the petitioner would remain contingent upon the material to be led in evidence by the parties before the Arbitrator.

[6]. In view of law laid down in *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* the authority of Managing Director to nominate the Arbitrator, who may be otherwise eligible and respectable person is negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the amended Act of 2015. The Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid judgments.

[7]. In view of the aforesaid facts and circumstances of the case, I hereby appoint Sh. B.M. Bedi, District & Sessions Judge (Retd.), House No.22, Sector 4, Panchkula. Contact No.0172-4173603, 8054381862, email: bmbedi@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 shall complete the proceedings within

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 parties in equal proportion.

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

Sh. B.M. Bedi, District & Sessions Judge (Retd.)
House No.22, Sector 4, Panchkula.
Contact No.0172-4173603, 8054381862,
email: bmbedi@yahoo.co.in

[10]. Petition stands disposed of accordingly.

September 01, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No