



ARB-88-2021

-1-

216

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

ARB-88-2021

Date of decision:-30.08.2024

Indian Potash Ltd.

...Petitioner

Versus

The Punjab State Co-operative Supply & Marketing Federation Ltd.

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

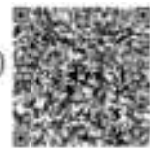
Present : Mr.K.D. Sachdeva, Advocate
for the petitioner.

Mr.Jabar Jeet Singh, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant petition filed under Section 11 read with Section 12 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an independent Arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that respondent placed order dated 19.05.2016, Annexure A2, for supply of DAP for Rabi 2016-17 upon the petitioner and Clause 9 thereof, contains a provision for appointment of an arbitrator to resolve any dispute between the parties. He submits that the supply of fertilizers was made to the respondent in



ARB-88-2021

-2-

216

terms of the purchase order and the respondent made some payments over the period of time. By referring to email dated 02.02.2018, Annexure A7 (colly), he submits that the last payment was made in December, 2017. It is his assertion that as some payment was withheld, petitioner invoked the arbitration clause by serving legal notice dated 02.11.2020, Annexure A8, wherein he proposed the name of three arbitrators, but the notice remained unattended. A short reply has been filed on behalf of the respondent, which is taken on record, wherein it has been submitted that the petition is barred by limitation. An argument has been raised by counsel for the respondent that the dispute arose on 04.10.2016 when by communication, Annexure R2, respondent sought reduction in the price of fertilizer supplied by the petitioner. Petitioner has filed a replication to the short reply, which is also taken on record and has reiterated the stand taken in the petition.

3. I have heard counsel for the parties and considered their respective submissions.

4. In its communication, Annexure A7, petitioner has taken a categorical stand that some payment was made in December, 2017. In their response respondents have neither denied this communication nor have they denied that some payment was made in December, 2017. This fact therefore is deemed to have been admitted by the respondent. Notice invoking the arbitration clause was served in November, 2020 and therefore it is within the period of limitation prescribed under the Limitation Act, 1963. Arbitration clause names the Managing Director, Markfed or his nominee as the Arbitrator, but in view of Section 12 (5)



ARB-88-2021

-3-

216

of the Act, they are ineligible to be appointed. As a dispute has arisen between the parties, it is required to be adjudicated by an Arbitrator.

5. In view of the above, petition is allowed. Mr. Justice (Retd.) S.S. Saron, a former Judge of this Court, r/o House No.9, Sector 9, Chandigarh, M: 97800 08109 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

6. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

7. Parties will be at liberty to raise all the pleas/defences before the Arbitrator.

8. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

9. A request letter be sent to Mr. Justice (Retd.) S.S. Saron alongwith a copy of this order.

(SUVIR SEHGAL)
JUDGE

30.08.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No