

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

Arbitration Case No. 216 of 2016 (O&M)  
DATE OF DECISION: 07.04.2017

M/s Supreme Engineer and Consultants Associates  
..... Petitioners  
versus

M/s Sunder Dass and Company and others  
..... Respondents

CORAM: - HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE

Present: Mr. Anil K. Aggarwal, Advocate for the petitioners  
Mr. Ashwani Talwar, Advocate for the respondents

S. J. VAZIFDAR, CHIEF JUSTICE (Oral):

CM-7803-CII-2017:

Affidavit of respondent No. 3 taken on record subject to all just exceptions.

C.M. stands disposed of.

Arbitration Case No. 216 of 2016:

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of a sole arbitrator.

2. The parties had entered into a contract, clause 6 whereof reads as under: -

"6. In case of any dispute between the parties same shall be referred to the arbitrator to be appointed by the Managing Director of M/s Nanaji Engineers & Consultants Pvt. Ltd, whose decision shall be final and binding on both parties."

3. I am informed that M/s Nanaji Engineers & Consultants Private Limited is no longer in existence.

4. Mr. Talwar, the Learned counsel appearing on behalf of the respondents, submits that M/s Nanaji Engineers & Consultants Private Limited no longer exists and, therefore, the arbitration clause does not survive. The submission is not well-founded. Where an arbitration agreement stipulates that the arbitrator is to be appointed by a particular party and that party is unable to appoint an Arbitrator for any reason including on account of the party no longer being in existence the arbitration clause survives nevertheless. This is not a case of the arbitration agreement stipulating the name of an arbitrator and providing further that in the event of such a person not being able to act as an arbitrator the arbitration clause would come to an end. In the present case, the clear intention of the parties was to have the disputes and differences between themselves referred to arbitration. There is nothing to indicate that in the event of the appointing authority not being available or not appointing an arbitrator for any reason the arbitration clause fails.

5. In the circumstances, the petition is disposed of by appointing Mr. Justice Pritam Pal, former Judge of this Court, as the sole arbitrator. The venue shall be the Chandigarh Arbitration Centre and the fee shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrators' Fees) Rules, 2014.

07.04.2017  
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(S. J. VAZIEDAR)  
CHIEF JUSTICE