

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB No. 258 of 2019(O&M).
Date of Decision:23.05.2022

M/s Aryan Engineers, through Pankaj Malik, Sole Prop.,

.....Applicant

Versus

Haryana State Agricultural Marketing Board and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. P.S.Rana, Advocate
for the applicant.

Mr. Vishal Garg, Advocate
for the respondents.

LISA GILL, J(Oral).

Prayer in this application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short – ‘the Arbitration Act’), is for appointment of sole independent Arbitrator for resolution of disputes and differences arising between the parties out of the work allotted vide memo no. 3460 dated 21.08.2008.

It is submitted that Superintendent Engineer, Haryana State Agriculture and Marketing Board, Hissar, was appointed as the Sole Arbitrator as per Clause 25-A of the Agreement. An *ex parte* award, it is submitted was arbitrarily and illegally passed on 09.05.2011, which was subject matter of challenge in a petition under Section 34 of the Arbitration Act by the applicant. Objections filed by the applicant were accepted. Award dated 09.05.2011 was set aside on 02.07.2016 by the learned Additional District Judge, Rohtak, while observing that contract agreement entered into between the parties was never placed on record by the respondents and the

Arbitrator while passing award dated 09.05.2011, had not gone into the terms and conditions of the award as the same was not even available. Therefore, findings returned by the Arbitrator cannot be in terms of the agreement entered into between the parties and while setting aside the award, it is observed that the Arbitrator, so appointed as per the agreement would decide the matter afresh as per the contract agreement and it was also directed that before initiating the proceedings, Arbitrator shall inform the objector about commencement of the proceedings.

It is submitted that when no intimation thereafter was received regarding commencement of any proceedings, legal notice dated 29.05.2019 was served upon the respondents seeking appointment of an independent Sole Arbitrator, but to no avail. Ultimately, present petition was filed.

Respondent has not denied the existence of an arbitral dispute or existing of an arbitral clause. Learned counsel for the respondent has raised a feeble objection that the applicant did not come-forward for appointment of an Arbitrator for nearly three years after passing of order dated 02.07.2016, by the learned Additional District Judge, Rohtak, whereby award dated 09.05.2011 was set aside. However, it is not denied that no proceedings were commenced by the department pursuant to order dated 02.07.2016. Notice dated 29.05.2019, was served well within three years of passing of award dated 02.07.2016.

Keeping in view the facts and circumstances as above, I do not find any impediment to the appointment of an independent Sole Arbitrator for resolution of the entire dispute between the parties arising out of work allotted vide memo dated 3460 dated 21.08.2008.

Keeping in view the facts and circumstances as above, this petition is allowed and Sh. B.M.Bedi, District & Sessions Judge (Retd.),

resident of House No. 22, Sector-4, Panchkula, Haryana, mobile no. 8054381862, is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator is to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended, to be borne equally by the parties.

A copy of this order be dispatched to Sh. B.M.Bedi, District & Sessions Judge (Retd.), at the following address:-

Resident of House No. 22, Sector-4, Panchkula, Haryana, mobile no. 8054381862.

23.05.2022
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.