

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

Arbitration Case No. 40 of 2017 (O&M)

DATE OF DECISION: 15.12.2017

Dr. Naveen Kumar and another

.... Petitioners

versus

M/s Aerens Goldsouk International Ltd.

..... Respondent

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

Present: Mr. Karan Gupta, Advocate for the petitioners

Mr. Sourabh Goel, Advocate for the respondent

..

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

CM-25508-CII-2017:

Written statement along with annexures is permitted to be taken on record subject to just exceptions.

C.M. stands disposed of.

ARB-40-2017:

This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for the appointment of an Arbitrator.

2. The parties had entered into a contract dated 19.04.2014, clause 10.19 whereof contains an arbitration agreement and reads as under: -

"10.19. Arbitration – The Parties herein agree that this Agreement shall be construed in accordance with the laws in force in India. In the eventuality of any dispute(s) or difference(s) arise(s) on any matter relating to or arising out of the present Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled by mutual

discussion, failing which, the same shall be referred to the Sole Arbitration of an Arbitrator to be appointed by the Developer/Vendor, whose decision shall be final and binding upon the parties. The sole Arbitrator shall conduct the arbitration proceedings at Gurgaon, Haryana. It is also agreed between the parties that arbitration proceedings would be conducted in English Language only and in no other Language."

3. Disputes and differences have, admittedly, arisen between the parties. The petitioners, by a letter dated 10.01.2017, invoked the arbitration clause. By a letter dated 06.02.2017, the respondent stated that the petitioners' contention that the Arbitrator would not be independent was not accepted and that the petitioners may seek to appoint an Arbitrator in accordance with clause 10.19. It was further contended that the notice dated 10.01.2017 invoking the arbitration clause was without jurisdiction and against the provisions of the Act.

This petition was filed on 20.02.2017. The respondent only thereafter nominated an Arbitrator on 30.05.2017.

4. The respondent has opposed this petition on two grounds. Firstly, it contends that under clause 10.19 of the contract it is entitled to nominate the Arbitrator. I have held that in any event the respondent has forfeited this right as it failed to nominate the arbitrator for more than thirty days after the receipt of the petitioners' letter dated 10.01.2017 invoking the arbitration agreement and till the filing of this petition. This contention is, therefore, rejected. Secondly, the respondent contends that the invocation of the arbitration clause by the petitioners' said letter dated 10.01.2017 was invalid as the petitioners did not seek

the appointment of an independent Arbitrator but only of the persons named in the letter. I have rejected this contention.

5. I will deal with the second contention first. Paragraphs 12, 13, 14 and the concluding part of the petitioners' letter dated 10.01.2017 read as under: -

- "12. Even otherwise also, though the Unit Buyer Agreement does contemplate appointment of an arbitrator by you noticee, however since the appointment of an arbitrator by a party to the dispute shall amount to conflict of interest as such the arbitrator appointed by you noticee shall not be in a position to independently opine/adjudicate on the same, thus making the settlement ineffective.
13. We are hereby invoking the arbitration clause contained in Application for allotment of furnished office(s) in the "India International Habitat Centre", Ludhiana dated 11.01.2012 and Subsequent Unit Buyer Agreement dated 19th April, 2014.
14. In view of the above and for settlement of dues of our client, it is imperative that the dispute is adjudicated upon by appointment of an Independent Arbitrator and accordingly we hereby nominate Sh. Balwant Singh (Retd.), District and Sessions Judge or Sh. M.S. Viridi (Retd.), District and Sessions Judge to adjudicate over the matter in controversy.

You are requested to concur to the appointment of either of the three names suggested above as expeditiously as possible and in any event within a period of thirty days from the date of receipt of this letter failing which my client shall be forced to approach the competent court of law."

In paragraph 13 of the letter, the petitioners invoked the arbitration clause in accordance therewith and in terms thereof. What followed in paragraph 14 and in the concluding paragraph were only the petitioners' suggestions. The petitioners merely suggested the names of certain persons who could be appointed as arbitrators

if the respondent agreed to the same. The petitioners did not suggest that if the said persons were not appointed as arbitrators the disputes and differences ought not to be referred to arbitration. They did not suggest that the disputes could be referred only to the persons named therein.

6. The respondent then contended that under clause 10.19 it is entitled to appoint an Arbitrator.

7. I will assume that the arbitration agreement before me in so far as it entitles the respondent to appoint the Arbitrator is valid. It makes no difference in the present case. As I noted earlier, the petitioners invoked the arbitration agreement by their letter dated 10.01.2017. The respondent failed to appoint an arbitrator for a period of thirty days and till after the filing of this petition. The respondent has, therefore, in any event, forfeited its right to appoint an arbitrator.

8. In the circumstances, the petition is disposed of by appointing Mr. Justice Rameshwar Singh Malik, a former Judge of this Court, as the sole Arbitrator. Venue of the arbitration shall be the Chandigarh Arbitration Centre. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrator's Fees) Rules, 2014.

15.12.2017
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(S. J. VAZIFDAR)
CHIEF JUSTICE

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO