



ARB-47-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB-47-2023 (O&M)

Date of Decision: 06.08.2024

Shanker Printing Mills

...Applicant

Versus

United India Insurance Company Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Chaitanya Mahajan, Advocate for the applicant

Mr. Munish Goel, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of an Arbitrator.

2. The applicant at the time of arising of dispute between the parties was a partnership firm which was later on converted into a private limited company. In the Dissolution Deed executed between the partners of the firm as well as in the Memorandum of Association and Articles of Association of the company, it was categorically jotted down that all the assets and liabilities of the partnership firm shall be assets and liabilities of the company.

3. The applicant obtained an insurance policy from respondent No.1-United Indian Insurance Company Limited. A fire broke out in the

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premises of the applicant and it lodged its claim with respondent. A surveyor was deputed by respondent who conducted survey and prepared his report. The applicant accepted a sum of ₹1,11,34,827/- as full and final payment. The acceptance letter was addressed to surveyor. The applicant apart from aforesaid full and final payment letter, vide communication dated 28.07.2022 intimated respondent that payment has been accepted without prejudice to their rights and they have accepted payment because of dire financial crisis.

4. Mr. Manish Goel, Advocate submits that during the pendency of dispute, the partnership firm has been converted into a private limited company and agreement was executed with partnership, thus, a private limited company cannot invoke arbitration clause when it was not party to agreement. He further submits that applicant has accepted full and final payment, thus, matter stands settled between the parties and arbitration clause cannot be invoked.

5. Mr. Chaitanya Mahajan, Advocate submits that applicant had accepted payment under coercion. The payment was accepted under protest which is evident from communication dated 28.07.2022.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. There is an arbitration clause in the agreement. The parties are neither disputing existence of agreement nor arbitration clause.



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8. The objection of respondent that agreement was executed with partnership firm which no more exists, thus, arbitration clause cannot be invoked by new entity, cannot be countenanced because all the assets and liabilities of partnership firm have been taken over by a private limited company. This fact has been duly jotted down in dissolution deed as well as Memorandum of Association and Articles Association of the company.

9. The communication dated 28.07.2022 of applicant indicates that payment was though accepted as full and final but it was under protest. The applicant has not waived its right to raise the dispute. This Court while adjudicating question of appointment of an Arbitrator cannot adjudicate this question especially when the applicant *prima facie* has made out a case of accepting payment under protest. It is settled proposition of law that if payment is accepted under coercion or duress, it cannot be treated as full and final settlement provided party which claims coercion or duress is able to *prima facie* prove that there was no free will.

10. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

11. Mr. Justice (Retd.) Harbans Lal, residing at #3006-A, Sector 39-D, Chandigarh, Mobile No.7508011577 is requested to act an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

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

13. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

14. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.

15. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

16. A request letter along with copy of this order be sent to Mr. Justice (Retd.) Harbans Lal.

17. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

06.08.2024*Mohit Kumar*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No