

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7005 OF 2013
(arising out of S.L.P. (Civil) No.26375 of 2011)

A2Z MAINTENANCE & ENG.SER.LTD. Appellant(s)

VERSUS

PUNJAB STATE CORP.LTD.(PSCL) Respondent(s)

CIVIL APPEAL NO. 7006 OF 2013
(arising out of S.L.P. (Civil) No. 26513 of 2011)

O R D E R

Leave granted.

2. By the impugned order, the Designated Judge has refused to appoint arbitrator on the application made by the appellant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act'). The Designated Judge observed that though the respondent should have appointed an arbitrator within 30 days of the receipt of the demand to seek resolution of the dispute by an arbitrator but now since the respondent has appointed the arbitrator even before the notice of petition was served upon them, there was no justification for an appointment of another arbitrator.

3. It is not necessary to go into detailed facts. Suffice it to say that by a notice dated 18.1.2011, the appellant called upon the respondent to appoint sole arbitrator for resolution of the disputes that have arisen between the parties from the contract dated October 25, 2007. There is no dispute that the contract contains arbitration clause. The respondent did not appoint any arbitrator within 30 days of the receipt of the notice. On 18.04.2011, the appellant filed a petition under Section 11(6) of the 1996 Act for appointment of arbitrator before the High Court of Punjab and Haryana. It was after the petition was filed that the respondent appointed the arbitrator.

4. The legal position is no more res integra. As a matter of fact, the controversy is directly covered by three decisions of this Court : (i) Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another¹, (ii) Punj Lloyd Ltd. Vs. Petronet MHB Ltd.² and (iii) M/s Deep Trading Company Vs. M/s Indian Oil Corporation and Ors.³ The last of these three decisions is by a three Judge Bench of this Court.

Speaking for the Bench in Deep Trading³ one of us (R.M. Lodha, J.) observed as follows :-

"If we apply the legal position expounded by this Court in Datar Switchgears¹ to the admitted facts, it will be seen that the Corporation has forfeited its right to appoint the arbitrator. It is so for the reason that on 09.08.2004, the dealer called upon the Corporation to appoint the arbitrator in accordance with terms of Clause 29 of the agreement but that was not done till the dealer had made application under Section 11(6) to the Chief Justice of the Allahabad High Court for appointment of the arbitrator. The appointment was made by the Corporation only during the pendency of the proceedings under Section 11(6). Such appointment by the Corporation after forfeiture of its right is of no consequence and has not disentitled the dealer to seek appointment of the

arbitrator by the Chief Justice under Section 11(6). We answer the above questions accordingly."

5. In light of the above legal position, it is clear that the appointment of arbitrator made by the respondent during the pendency of the proceedings under Section 11(6) of the 1996 Act could not have been a relevant factor for refusing to exercise the power under Section 11(6). As a matter of law, in Deep Trading³ it has been held that such appointment after forfeiture of right is of no consequence and does not dis-entitle the contractor to seek appointment of the arbitrator by the Chief Justice under Section 11(6) of the 1996 Act.

6. Consequently, Appeals are allowed. The impugned judgment is set aside.

7. Learned counsel for the parties agreed that Mr. Justice R.C. Chopra (former Judge of Delhi High Court) be appointed as sole arbitrator for resolution of disputes between the parties. We order accordingly.

8. The arbitrator shall settle the terms of arbitration and his remuneration in consultation with the parties.

9. No costs.

.....J.
(R.M. LODHA)

NEW DELHI;J.
AUGUST 22, 2013 (MADAN B. LOKUR)

ITEM NO.7 COURT NO.3 SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).26375/2011

(From the judgement and order dated 18/08/2011 in AP No.60/2011 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

A2Z MAINTENANCE & ENG.SER.LTD. Petitioner(s)

VERSUS

PUNJAB STATE CORP.LTD.(PSCL) Respondent(s)
(With prayer for interim relief and office report)
[FOR FINAL DISPOSAL]

WITH
SLP(C) NO. 26513 of 2011
(With prayer for interim relief and office report)
[FOR FINAL DISPOSAL]

Date: 22/08/2013 These Petitions were called on for hearing today.

