

(2004) 10 DEL CK 0110

In the Delhi High Court

Case No : Arbitration Petition 156 of 2004

Shri B.S. Sangwan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(4), 11(5), 11(6)

Citation : (2005) 1 ARBLR 180

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Sanjay Yadav, for the Appellant; Nemo, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application under Sections 11 of the Arbitration and Conciliation Act, 1996 seeking the appointment of Arbitrator.

2. It has been averred by the petitioner that as per the arbitration clause of the agreement between the parties, the arbitration was invoked by the petitioner vide letter dated 22nd January, 2004 as stated in paragraph 7(n) of the petition. The letter dated 22nd January, 2004 bears out the averment.

3. There is no effective denial of the said averment in the reply furnished to the learned counsel for the petitioner though not filed in Court. There is no denial of the existence of the arbitration clause though objection on merits has been raised. Accordingly, the petitioner is entitled to succeed in view of the following position of law laid down in Datar Switchgears Ltd. v. Tata Finance Ltd. & Another reported as JT2000 (2) 226 wherein the relevant para 19 reads as follows:-

"19. So far as cases falling u/s 11(6) are concerned-such as the one before us-no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed u/s 11(4) and Section 11(5) of the Act. In our view, Therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an Arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get

automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court u/s 11, that would be sufficient. In other words, in cases arising u/s 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application u/s 11 seeking appointment of an Arbitrator. Only then the right of the opposite party ceases. We do not, Therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an Arbitrator u/s 11(6) is forfeited."

4. Accordingly, Mr. Harish Chandra, Ex-Member, U.P.S.C., B-761, Sushant Lok-I, Gurgaon (Mobile No. 98100338457, 95124-2385566) is appointed as Arbitrator. The parties to appear before the Arbitrator so appointed, on 8th November, 2004 at 4 PM on which day the statement of claim will be filed by the claimant. The Arbitrator is directed to dispose of the reference not later than 6 months from the first date of hearing of the reference. The Arbitrator shall fix his fee after consulting the parties.

5. The petition stands disposed of accordingly.