

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			ARBAP No. 10 of 2023 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> (1) Mr. Shubhang Dobhal, learned counsel for the applicant. (2) Mr. Arvind Kumar Sharma, learned counsel for the opposite party. (3) This is an application filed under Section 11(4)(5) & (6) of the Arbitration and Conciliation Act, 1996. According to applicant, Link Enterprises (<i>opposite party herein</i>) was awarded a contract for the work of improvement/strengthening of road under package No. C-15 in Uttarkashi for Maneri-Jakhol in the year 2013; applicant, who is registered contractor with Public Works Department, approached opposite party and expressed willingness to execute the work; a sub-contract agreement was executed between applicant and opposite party on 02.11.2014. (4) According to applicant, a dispute arose between applicant and opposite party, which has to be decided by the Arbitral Tribunal. The Arbitration Clause is contained in Clause 11 of the Agreement dated 02.11.2014, which is extracted below:- “11. In case of any dispute arising out of THIS AGREEMENT between the same shall be referred to a sole arbitrator appointed by mutual consent if mutual consent is not possible both the parties will appoint one Arbitrator each and both the Arbitrators so appointment will appoint third Arbitrator who will be the Presiding Arbitrator. These three Arbitrators will become arbitral tribunal for adjudication of disputes in terms of Arbitration and Conciliation Act, 1996.” (5) In view of the dispute arising out of subcontract agreement, applicant had earlier filed an application under Section 11(6) of the Arbitration and Conciliation Act, which was

			dismissed vide order dated 05.11.2020, which is extracted below:- “In terms of clause 11 of the sub-contract agreement dated 02.11.2014, both the parties are expected to appoint one arbitrator each, who shall again appoint the third arbitrator. 2. Petitioner has not even appointed an arbitrator. Therefore, she cannot file this petition seeking appointment of an arbitrator. 3. Hence, the petition is dismissed with the liberty to the petitioner, as provided in the sub-contract agreement dated 02.11.2014.” (6) Learned counsel for applicant submits that subsequent to the aforesaid order dated 05.11.2020 passed by this Court, applicant appointed Mr. Vinod Vyas as Arbitrator and Mr. Vinod Vyas issued a letter dated 22.12.2021 to opposite party, asking him to appoint Arbitrator, as per clause 11 of the Agreement. (7) Mr. Arvind Kumar Sharma, learned counsel for opposite party submits that respondent has also appointed Mr. Abhay Garg, Advocate, as Arbitrator. Thus, he submits that now the third Arbitrator has to be appointed in terms of clause 11 of the Agreement. (8) Learned counsel for the parties submit that some retired Judicial Officer may be appointed as Presiding Arbitrator. (9) Accordingly, the Arbitration Application is allowed. I, appoint Mr. I.J. Malhotra, (Retired District Judge), R/o Duplex House No. 3, Sahastradhara Enclave, Dehradun to act as third Arbitrator to adjudicate all disputes between the parties in terms of the aforesaid agreement. (Manoj Kumar Tiwari, A.C.J.) 29.12.2023 <i>Aswal</i>
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