

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			ARBAP 29/ 2023 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> Mr. Piyush Garg, Advocate, for the applicant. Mr. Nishant Krishan Adhikari, Advocate, i/b Mr. Ramji Srivastava, Advocate for the respondents. (2) This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of arbitrator. According to applicant, a contract for Renovation of E & M Works of Badrinath SHP was granted to him by Uttarakhand Renewable Energy Development Agency (URED A). Clause 1.27(2) of the said contract contained arbitration clause, which reads as under: <i>"If after thirty (30) days from the commencement of such informal negotiations, the purchasers and the supplier have been unable to resolve amicably a contract dispute, all such matter shall be referred in writing, to the Principal Secretary/Secretary, Deptt. of Renewable Energy, Govt. of Uttarakhand, Dehradun or a person nominated by him as a sole arbitrator."</i> (3) According to applicant, he completed the part of the renovation work as per the agreement, however, payment for the work done by the applicant has not been released so far.

			Learned Counsel for the applicant submits that arbitration clause was invoked by issuing a notice on 30.1.2023, whereby respondent was requested to appoint arbitrator within a week, however, till date no response has been received from the respondent and arbitrator has also not been appointed. (4) A counter affidavit has been filed by Mr. Manoj Kumar, Dy. Chief Project Officer, UREDA, Dehradun. In para 6 of the counter affidavit, defence taken is that under the arbitration clause, Principal Secretary/Secretary, Department of Renewable Energy has been named as the sole arbitrator, therefore, it was incumbent upon the applicant to have directly referred the alleged dispute to the arbitrator named in the arbitration clause. (5) This Court finds substance in the contention raised on behalf of the applicant that in view of Section 12(5) of the Arbitration and Conciliation Act, Principal Secretary/Secretary, Department of Renewable Energy can no longer act as arbitrator. Section 12(5) of the Act is reproduced below: <i>“12(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:</i> <i>Provided that parties may,</i>
--	--	--	--

		<i>subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing. “</i> (6) Mr. Piyush Garg, learned Counsel for the applicant, has relied upon judgements rendered by Hon’ble Supreme Court in the case of <i>Punj Lloyd Ltd. v. Petronet MHB Ltd.</i>, reported as (2006) 2 SCC 638, and <i>Datar Switchgears Ltd. v. Tata Finance Ltd</i>, reported as (2000) 8 SCC 151, in support of his contention that in the event one of the parties to the dispute fails to appoint arbitrator within 30 days from the date of receipt of notice, then he loses the right to appoint the arbitrator. He further submits that not only the respondents failed to appoint arbitrator within 30 days from the date of receipt of such notice, but respondents have not appointed any arbitrator till filing of the arbitration application and even thereafter. (7) For the reasons recorded above, Arbitration Application is allowed. Justice B.S. Verma (Retd.) is appointed to act as the sole Arbitrator to adjudicate all disputes, claims and counter-claims between the parties arising out of their aforesaid agreement. The learned Arbitrator may hold the proceedings virtually as well. (Manoj Kumar Tiwari) A.C.J. 27.12.2023 Pr
--	--	--

--	--	--	--

--	--	--	--