



2024:UHC:9792

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			ARBAP No. 25 of 2024 <u>Hon'ble Manoj Kumar Tiwari, ACJ</u> 1. Mr. Vinay Kumar, learned counsel for the applicant. 2. None present for the respondent. 3. This is an application for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. 4. According to applicant, he was awarded a contract of Design, Construction, Supply, Erection, Installation & Commissioning of 150KLD Capacity Sewage Treatment Plant based on SBR Technology at Sangam Bazar Zone, Devprayag (Uttarakhand) by respondent no. 2. 5. The contract/agreement was executed between the parties on 28.10.2015. Petitioner has relied upon Clause 7.24 of the Agreement, which contains arbitration clause. The same is extracted below:- "7.24 ARBITRATION: 7.24.1 SETTLEMENT OF DISPUTES: If Contractor considers any work demanded of him to be outside the requirements of the Contract or considers any drawings, record or ruling of the Engineer or his representative on any matter in connection with or arising out of the Contractor or carrying out of his work to be unacceptable, he shall promptly ask the Engineer or his representative in writing for written instructions or decisions within Engineer or his representative shall give his written instructions or decisions within a period of thirty (30) days of such request. Upon receipt of the written instructions of direction, the Contractor shall promptly proceed without delay to comply with such instructions or decisions.



			If Engineer or his representative fails to give his instructions or decision in writing within a period of thirty days after being requested, or if the Contractor is dissatisfied with the instructions or decision of the Engineer, the Contractor may, within thirty days after receiving the instructions or decisions appeal to the Managing Director, of the Nigam who shall afford an opportunity to the Contractor to be heard and to offer evidence in support of his appeal. This official shall given a decision within a period of thirty days after the Contractor has given the said evidence in support of his appeal. If the Contractor is dissatisfied with this decision, he shall indicate, within a period of thirty from the receipt of such decision, his intention to refer the dispute to Arbitration, failing which the said decision, shall be final and conclusive. 7.24.2 ARBITRATION All disputes or differences in respect of which the decision is not final and conclusive shall on the initiative of either party be referred to the adjudication of three arbitrator. One arbitrator is to be nominated by the Owner, one by the Contractor and the third by the Chairman Indian Chamber of Commerce. If either of the party fails to appoint its arbitrator within sixty days after receipt of notice for the appointment of an arbitrator, then the Chairman, Indian Chamber of Commerce shall appoint an arbitrator. A certified copy of the appointments made by "Chairman" shall be finished to both the parties. The arbitration shall be conducted in accordance with the rules, procedure provision of Indian Arbitration Act, 1940 with any statutory modification there and shall be held at such place and time in India as the Arbitrators may determine. The decision of the majority of the Arbitrators shall be final and binding upon the parties and the expenses of the Arbitrator shall be paid as may be determined by the Arbitrator. Performance under the Contract, shall if reasonably possible, be continued during the arbitration proceedings and payments due to the Contractor by the Owner shall not be withheld, unless they are the subject of the arbitration proceedings. All awards for claims equivalent to Rupees Thirty thousand or more shall be in writing and state reasons for the amounts awarded. Neither party is entitled to bring a claim to arbitration if its arbitrator has not been appointed within thirty days. All disputes in the matter of this Contract are subject to jurisdiction of appropriate court at Dehradun." 6. According to applicant, a dispute arose between the parties to the agreement; despite repeated requests,
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		grievance raised by applicant was not redressed by respondents, then ultimately he invoked arbitration clause by issuing notice, however, despite notice, Arbitrator has not been appointed, therefore, prayer is made to appoint Sole Arbitrator to adjudicate the dispute between the parties. 7. Mr. S.S. Chauhan, Advocate had accepted notice on behalf of respondents and he was given time to file counter affidavit vide order dated 28.06.2024, thereafter vide order dated 16.08.2024; last opportunity was given to respondents for filing counter affidavit; on 20.09.2024, further time was granted for filing counter affidavit and vide order dated 26.11.2024, further ten days were granted to respondents for filing counter affidavit. 8. Till date, counter affidavit has not been filed, thus, the averments made in the application remain un-rebutted. There is no one to represent the respondents, when the case is called out. 9. As per stand taken by the applicant, there is an arbitration clause in the contract executed between the parties, according to which, any dispute or difference has to be referred for Arbitration. 10. Since existence of arbitration agreement is not disputed and a dispute has arisen between the parties, which can only be resolved through Arbitration, therefore, I allow this application and appoint Hon'ble Mr. Justice Rajesh Tandon, Retd. Judge, High Court of Uttarakhand, R/o Bunglow No. 19, High Court Judges Colony, Sector 105, Noida –
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			201301 having Mobile No. 9870687606, as sole Arbitrator in the matter to adjudicate the disputes between the parties arising out of the aforesaid contract/agreement, subject to his furnishing declaration, in terms of Section 11(8) read with Section 12 of the Arbitration and Conciliation Act, 1996 regarding his independence and impartiality in the matter, to this Court within ten days from the date of receipt of this order. Learned Arbitrator shall fix his fees in consultation with both the parties. 11. The Registrar General of this Court is hereby directed to forthwith supply a copy of this order to the prospective Arbitrator. (Manoj Kumar Tiwari, ACJ) 20.12.2024 Aswal NITI RAJ SINGH ASWAL
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