

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.772 of 2024  
Decided on: 11.09.2026

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Divisional Manager Himachal Pradesh SFDC Limited

.....Petitioner

Versus

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Prem Lal

.....Respondent

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*Coram:*

***The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.***  
*Whether approved for reporting?*

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For the petitioner: Mr. Kiran Dhiman, Advocate.

For the respondent: Mr. Kulwant Chauhan, Advocate.

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**G.S. Sandhawalia, Chief Justice.**

The petitioner-Corporation seeks the appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') arising from the agreement dated 20.03.2012 (**Annexure P-1**). This agreement pertained to Lot No.7/2012 (Nalagarh), District Solan, under the Forest Working Division, Himachal Pradesh.

2. The petition was filed on the strength of clause 36 of the agreement, which mandated that disputes be referred to arbitration. Necessary notices were duly sent, and an award was passed on 11.12.2017 (**Annexure P-3**) in favour of the petitioner. The Arbitrator who was the Director (South) of the Corporation itself awarded a

sum of Rs.1,76,972/- along with interest at the rate of 9% per annum from the date of filing the claim i.e. 07.11.2015.

3. An execution petition was filed, which was subsequently dismissed by the District Judge, Solan, Himachal Pradesh, on 25.04.2022 (**Annexure P-4**). The dismissal was based on the grounds that the Arbitrator was ineligible under Section 12(5) read with the Seventh Schedule of the Act.

4. The challenge to this dismissal order was later upheld in **CMPMO No.58 of 2023**, titled as ***Divisional Manager, H.P. State Forest Development Corporation Ltd. Vs. Prem Lal***, decided on 27.02.2023 (**Annexure P-5**). Following this, **CWP No.9809 of 2023**, titled as ***Divisional Manager H.P. State Forest Development Corporation Ltd. Vs. Sh. Prem Lal*** was filed and dismissed on 19.12.2023 (**Annexure P-6**) with a liberty to the petitioner to file an appropriate petition under the appropriate Statute for the appointment of the Arbitrator. Resultantly, the present petition was filed on the grounds that the agreement contains an arbitration clause and no other remedy is available and the parties have been in dispute since 2015.

5. In the reply, the respondent has submitted that the dispute arose from an agreement dated 20.03.2012 (**Annexure P-1**), which was executed for a duration of only one year. The respondent

contends that because the initial Award was held to be *void ab initio* and that decision has attained finality, a second Arbitrator cannot be appointed for the same very dispute, as the principle of *res judicata* applies. Therefore, a fresh application seeking the appointment of another arbitrator to adjudicate the same dispute would not, as such, lie.

6. In such circumstances, the Corporation filed replication submitting that the previous ruling does not bar the petitioner from seeking the appointment of a fresh arbitrator for adjudication on the merits, because the earlier proceedings were terminated on technical grounds (being *void ab initio*) rather than on the merits of the dispute and the dispute itself remains alive.

7. This Court is of the considered opinion that once the application under Section 34 of the Act had been allowed on 25.07.2022 (**Annexure P-4**), it was incumbent upon the Corporation at that point of time to seek the necessary permission from the Court concerned to take recourse to fresh proceedings by serving a notice and initiating the process for the appointment of an Arbitrator.

8. The executing Court had concluded, based on the judgment of the Apex Court in ***TRF Limited Vs. Energo Engineering Projects Limited (2017) 8 SCC 377***, that the Arbitrator became ineligible under the Act following the amendment that came

into force on 23.10.2015. Under this amendment, any person who falls within the categories specified in the Seventh Schedule is ineligible to be appointed as an Arbitrator. The judgment, having been passed on 03.07.2017, settled this position of law. Resultantly, the Arbitrator having been appointed by the Managing Director and being an employee of the Corporation, should have terminated the proceedings rather than moving ahead and passing the Award on 11-12-2017 after the judgment had been rendered in **TRF Ltd. case** (*supra*).

9. In the proceedings under Section 34 of the Act, the District and Sessions Judge, Solan, held that the appointment was null and void, and that the pending proceedings before such an Arbitrator could not be sustained. The Arbitrator was appointed on 17.01.2017, and the Court concluded that the Award could not be executed. As no permission was granted at that time to file a petition under Section 11(6) of the Act, the same defect persisted even when this Court was approached through **CMPMO No.58 of 2023**, titled as **Divisional Manager H.P. State Forest Development Corporation Ltd** and the said order was upheld, and it was held that in the absence of an express agreement in writing *inter se* the parties to satisfy the requirements of Section 12(5) of the Act, the proceedings

would be void. As leave was never obtained to file a fresh petition, the defect remains uncured.

**10.** In such circumstances, as the matter had already been finalized *inter se* the parties, merely filing a writ petition in the year 2023 for the appointment of an Arbitrator would not, create a fresh cause of action. Resultantly, the present petition, filed on 07.08.2024, cannot revive an issue that has already become final and is binding *inter se* the parties. Furthermore, since the respondents successfully had the award set aside in execution, they are entitled to the fruits of that litigation and cannot be foisted to a new round of litigation for the appointment of an Arbitrator.

**11.** Resultantly, no grounds have been made out to allow the application under Section 11(6) of the Act and the present petition stands dismissed accordingly.

**12.** Pending miscellaneous application(s), if any, shall also stand disposed off.

**(G.S. Sandhawalia)**  
**Chief Justice**

**11<sup>th</sup> September, 2026**  
(Munish Thakur)