

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

ARB No.223-2017(O&M)
Date of decision : 25.5.2018

Amit Kumar Singla

..... Petitioner

VERSUS

Haryana Urban Development Authority (Now Haryana Shahri
Vikas Pradhikaran and another)

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

Present: Mr.Abbeek Kakkar, Advocate for Mr.Arun Gupta,
Advocate for the petitioner.
Mr.Rajesh K. Sheoran, Advocate for the
respondents.

AJAY KUMAR MITTAL, ACJ.

1. The petitioner has invoked the jurisdiction of this Court under Section 11(6) of the Arbitration & Conciliation Act, 1996 (in short, the Act of 1996') for appointment of an independent sole Arbitrator in terms of clause 25A of the agreement which is to the following effect:

"If any question, difference or objection whatsoever shall arise in any way connected with or arising out of this instalment or the meaning or operation of any part thereof of the rights duties or liabilities or either party than save. In so far as the decision of any such

matter is hereinbefore provided for and has been so decided every such matter including whether its decision has been otherwise provided for and or whether it has been finally decided accordingly or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the Superintendent Engineer, Haryana Urban Development Authority KNL circle or his successor acting as such at the time reference by the contractor or Executive Engineer-in-charge within 180 days from the payment of the final bill to the contractor or from the date of issue of registered notice to the contractor to the effect that his final bill is ready for payment and his decision shall be final and binding and where the matter involves a claim for the payment or recovery of deduction of money, only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred. The party invoking arbitration shall have to bear the expenses or arbitration. If the matter is not referred to arbitration within the specified period, all the rights

and claims under the contract shall be deemed to have been forfeited and absolutely time barred.”

2. Upon notice having been issued, reply on behalf of the respondents has been filed, wherein it has been stated that Superintending Engineer, HUDA Circle, Karnal has been appointed as Arbitrator by the Chief Engineer who had initiated the proceedings. However, thereafter on 7.11.2016, the petitioner made an application to the Chief Engineer, HUDA, Panchkula with the request to appoint an independent Arbitrator, whereupon, Superintending Engineer, HUDA, R.G.E.C. Circle, Sonapat was appointed as Arbitrator. On an application being filed by the petitioner on 24.4.2017, the Arbitrator was changed and again office of the Deptt. i.e., Superintending Engineer, HUDA Circle, Hissar was appointed as Arbitrator on 22.5.2017. The petitioner, has now, approached this Court for appointment of an independent Arbitrator.

3. Reliance was placed upon the judgment of this Court rendered in M/s Thermex Limited v. Municipal Corporation, Chandigarh, ARB No.71 of 2015, decided on 9.10.2017 for seeking appointment of an independent Arbitrator other than an officer of the Deptt. Support was drawn from the following observations:

“This has been recognized by the legislative mandate expressed by way of amendment incorporated in the

Act. The Parliament in order to give effect to consistent view taken by the Courts on the need for fair and impartial arbitrator had amended the Act by Arbitration and Conciliation (Amendment) Act, 2015 (in short, "the amended Act") effective from 23.10.2015. As per amended Section 11(8) of the Act, the Supreme Court or as the case may be, the High Court or the person or institution designated by such court, before appointing an arbitrator shall seek a disclosure in writing from the prospective arbitrator in terms of sub section (1) of Section 12 and have due regard to the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator. Further, in order to avoid parties choosing their own employees as arbitrators, the Act has expressly barred such appointment and has made it a disqualification. Section 12(5) of the amended Act provides that even if there existed any prior agreement to the contrary where the relationship of any person 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. Exception

has been carved out where the parties may waive the applicability of this sub section by an express agreement in writing subsequent to dispute having arisen between them. In other words, Section 12(5) of the Amended Act has made it clear that persons coming under Seventh Schedule are not eligible for appointment as arbitrators. It specifically bars appointing employees of one of the disputing parties as arbitrator notwithstanding the contractual clause permitting the same. Entry 1 in the Seventh Schedule which is relevant is as under:-

“The Seventh Schedule”

[see Section 12(5)]

**ARBITRATOR’S RELATIONSHIP WITH THE
PARTIES OR COUNSEL**

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

2 to 19. XXXXXXXXXXXX

Explanation 1 to 3 XXXXXXXXXXXXX”

4. A plain reading of the aforesaid observations shows that the person who is consultant, advisor or has any other past

or present business relationship with a party shall not be appointed as an Arbitrator.

5. Accordingly, the petition is disposed of by appointing Sh.S.P.Arora, HCS (Retd.) now Advocate, #716, Sector 7, Chandigarh as the sole Arbitrator. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrators' Fees) Rules, 2014.

May 25, 2018
KD

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes / No