

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

ARB No. 83 of 2021

Date of Decision: December 14 , 2021.

M/s RYSA Infratech

..... PETITIONER

Versus

Union of India and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. P.S.Rana, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for respondents No.1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out of Agreement, Annexure P1, executed between the parties.

Applicant, M/s Rysa Infratech is stated to be a proprietorship concern dealing in supply and installation of effluent treatment plants. An agreement (relevant part thereof is at Annexure A1) was executed between the parties. Dispute arose between the parties during currency of the contract. As

per clause 70 of the Agreement (Annexure A1), Col. Suraj Bhan Singh, CWE, Ambala was appointed as an Arbitrator on 18.12.2017. He entered upon reference on 16.03.2018 (Annexure P3). Period for arbitration was extended vide order dated 14.02.2020 passed by the learned Additional District Judge, Patiala on an application moved by the applicant under Section 29A(4) of the Act. However, the said Arbitrator resigned on 22.09.2020 and Col. Niket Suda, ACE, respondent No.3 was appointed as an Arbitrator. However, respondent No.3 did not enter upon reference. Accordingly, present petition was filed. It is submitted that respondent No.3, Col. Niket Suda, ACE has also resigned on 12.03.2021 during pendency of this petition.

Learned counsel for the petitioner submits that in view of the provisions of Section 12(5) of the Act as well as judgment of the Hon'ble Supreme Court in **TRF Ltd. v. Energo Engineering Project Ltd., 2017 (8) SCC 377**, serving official of the respondent-authorities, in any case, cannot be appointed as an Arbitrator.

Learned counsel for respondents No.1 and 2 submits that in the matter under adjudication, another Arbitrator Mr. J.R. Bhatia, IDSE, Director (E/M), Headquarter CE, Chandigarh Zone has subsequently been appointed on 24.07.2021. However, learned counsel for the respondents is unable to deny the specific provisions of the Act and judgment of the Hon'ble Supreme Court in **TRF Ltd. (supra)** on the aspect. Claim of the applicant is, however, repudiated by respondents No.1 and 2.

Clause 70 of the agreement provides for resolution of the dispute through arbitration. Existence of an arbitrable dispute between the parties is not denied, neither is the existence of the arbitration clause denied. Unilateral

appointment of an Arbitrator during pendency of this petition is clearly not an impediment for interfering in this matter.

Keeping in view the facts and circumstances as above, this petition is allowed and Mr. Justice Rakesh Kumar Garg (Retd.), former Judge of Punjab and Haryana High Court, resident of #417, Sector 35, Chandigarh, 0172-2666417, Mobile No.9780008133 is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time to be borne equally by the parties.

A copy of this order be dispatched to Mr. Justice Rakesh Kumar Garg (Retd.), former Judge of Punjab and Haryana High Court, at the following address:-

#417, Sector 35, Chandigarh, 0172-2666417, Mobile No.9780008133.

December 14 , 2021.
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(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No