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

**ARB No.148 of 2019 (O&M)
Date of Decision: 08.09.2022**

M/s Imedia Blitz Solutions Pvt. Ltd.

.....Petitioner

Vs

M/s BPTP Limited

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Salil Dev Singh Bali, Advocate
for the petitioner.

Mr. Hemant Saini, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of sole Arbitrator.

[2]. Petitioner has valued his claim to the tune of Rs.70,91,216/- and Rs.25,00,000/- towards loss and damages suffered due to breach of contract. Petitioner has also claimed interest @18% per annum. The existence of contract agreement containing arbitration clause is not in dispute.

[3]. Notice of motion was issued on 24.05.2019.

[4]. Learned counsel for the respondent submits that the respondent has no objection in case, an independent Arbitrator is appointed, *de hors* the recital in the agreement in respect of appointment of official respondent.

[5]. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1.** Para No.54 of **TRF Limited vs. Energo Engineering Projects Limited case (supra)** reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the

plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[6]. In my considered opinion, the plea of the respondent can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid cited case laws.

[7]. In view of consensus arrived at between the parties, I hereby appoint HMJ M.M.S. Bedi (Retd.), House No.2152, Sector-44-C, Chandigarh-160047, Mobile No.09780008126, bedims@gmailcom to be the sole Arbitrator, to resolve the dispute between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[8]. The Arbitrator is requested to complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall

be borne by the petitioner and respondent No.1 in equal proportion.

[9]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[10]. A copy of this order be dispatched to the Arbitrator at the following address:-

HMJ M.M.S. Bedi (Retd.)
House No.2152, Sector-44-C, Chandigarh-160047.
Mobile No.09780008126
bedims@gmailcom

[11]. Petition stands disposed of accordingly.

08.09.2022	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No