

**CM-8812-CII-2022 in/and
CR-3387-2019 (O&M)**

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

**CM-8812-CII-2022 in/and
CR-3387-2019 (O&M)
Date of Decision: 26.07.2022**

HYDROTECH PARYAVARAN (INDIA) PVT. LTD.

..... Petitioner(s)

Versus

**PUNJAB WATER SUPPLY AND SEWERAGE BOARD AND
OTHERS**

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anupam Singla, Advocate
for the petitioner.

Mr. V.K. Kaushal, Advocate
for respondents no.1 to 3.

LISA GILL, J.

CM-8812-CII-2022

For the reasons mentioned in the application, duly supported by an affidavit of the applicant, same is allowed as prayed for. Document Annexure P-6 annexed alongwith the application, is taken on record, subject to just exceptions.

Application is disposed of.

CR-3387-2019

This revision petition has been filed for setting aside order dated 14.03.2019 (Annexure P-1), passed by the learned sole Arbitrator vide which petitioner has been directed to deposit 10% of the claimed amount

(deposit at call) as per Clause 25(viii) of agreement dated 26.08.2011 (Annexure P-2) as well as for setting aside order dated 10.05.2019 (Annexure P-5), passed by the learned sole Arbitrator dismissing petitioner's application for recalling order dated 14.03.2019.

Brief facts necessary for adjudication of the matter are that the work of Construction, Erection, Testing, Commissioning of 3.00 MLD Sewage Treatment Plant based on Moving Bed Bio-Reactor/MBBR Technology at Raman Mandi including Operation and Maintenance for a period of 60 months after stabilization period of 3 months was allotted to the petitioner by the respondents and an agreement dated 26.08.2011 (Annexure P-2) was executed between the parties. Dispute arose between the parties. Shorn of unnecessary details, it is relevant to note that the sole Arbitrator was appointed to adjudicate upon all disputes arising between the parties by this High Court vide order dated 18.05.2018 in ARB-155-2017 (Annexure P-3), filed by the present petitioner. Learned Arbitrator in terms of Clause 25(viii) of the agreement, directed the petitioner to deposit 10% of the total amount claimed.

Clause 25(viii) of the agreement reads as under:-

“It shall be an essential term of this contract that in order to avoid frivolous claims, the party invoking arbitration shall specify the dispute based on facts and calculations stating the amount claimed under each claim and shall furnish a 'deposit at call' for 10% of the amount claimed, on a schedule bank in the name of the Arbitration, by his official designation who shall keep the amount in deposit till the announcement of the award. In the event of an award in favour of the claimant, the deposit shall be refunded to him in proportion to the

amount awarded w.r.t. the amount claimed and the balance, if any, shall be forfeited and paid to the other party.”

Petitioner's application for review of order dated 10.05.2019 in view of the judgment of the Hon'ble Supreme Court in ***M/s. ICOMM Tele Ltd. Vs. Punjab State Water Supply & Sewerage Board and another, 2019(4) SCC 401***, was dismissed by the learned Arbitrator on the ground that there is no provision for review of an interim order passed by the learned Arbitrator. Hence, the present petition has been filed.

Learned counsel for respondents no.1 to 3 is unable to deny that the matter is squarely covered by judgment of the Hon'ble Supreme Court in ***M/s ICOMM's*** case (supra), where incidentally the respondent-Board was also a party. Clause 25(viii), it cannot be denied is identical to the Clause as was involved in ***M/s. ICOMM's*** case (supra). Hon'ble Supreme Court in the above said case has struck down such Clause while holding that deterring a party to an Arbitration from invoking this alternate dispute resolution process by a pre-deposit of 10% would discourage arbitration, which is contrary to the object of de-clogging the Court system. The said clause has been held to be wholly arbitrary, excessive and disproportionate.

No other argument has been addressed.

Keeping in view the facts and circumstances as above, order dated 14.03.2019 (Annexure P-1) is set aside being unsustainable. Revision petition is accordingly allowed.

26.07.2022

Sunil

(LISA GILL)
JUDGE

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