

273-a

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

ARB-459-2021 (O&M)

Date of decision : July 27, 2022

Sudarshan Facilities

....Applicant

Versus

Chandigarh Administration, Chandigarh and another

....Respondents

CORAM:-HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Chaudhary, Advocate for the applicant.

Mr. Gaurav Goel, Advocate for the respondents.

LISA GILL, J.

Prayer in this petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short – ‘the Arbitration Act’) is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out of Agreement dated 05.12.2013, Annexure A-1, executed between the parties. Clause 33 of the agreement provides for resolution of the dispute through arbitration.

It is submitted that notice dated 03.04.2021 (Annexure A4) was issued by the applicant raising a demand for arbitration while specifically stating that in view of Section 12 (5) of the Arbitration Act an independent Sole Arbitrator should be appointed. Three names were proposed by the applicant. However, respondent No. 2 did not respond within the stipulated period and in contravention of the applicable provisions issued letter dated 18.08.2021 directing the applicant to appear before the Arbitrator-cum- Principal Secretary, Medical Education and Research, who was stated to be appointed as an

Arbitrator. This unilateral appointment of the Arbitrator is stated to be violative of clear cut provisions of law.

Reply stands filed alongwith cost in terms of order dated 23.02.2022.

Learned counsel for the respondents is unable to deny existence of an arbitrable dispute between the parties as well as existence of the arbitration clause.

Objection raised in the reply filed on behalf of the respondents is that sole Arbitrator already stands appointed i.e. Principal Secretary, Medical Education and Research who is competent to decide the reference and that the applicant has no cause or occasion to challenge the jurisdiction of said Arbitrator. Yet again, learned counsel for the respondents is unable to deny that in view of Section 12(5) of the Arbitration Act and judgments of the Hon'ble Supreme Court in **TRF Limited versus Energo Engineering Projects Limited (2017) 8 SCC 377** and **Perkins Eastman Architects DPC and another vs. H.S.C.C. (India) Limited (2019) SCC online Supreme Court 1517**, this argument has no force. Same is, accordingly, rejected. Such Arbitrator has clearly incurred disqualification in terms of Section 12 (5) of the Arbitration Act and is ineligible to act such.

Accordingly, unilateral appointment of Principal Secretary, Medical Education and Research as Sole Arbitrator, further proceedings before whom were stayed vide order dated 02.09.2021, is set aside.

Keeping in view the facts and circumstances, Mr. Gurdev Singh (Retd.), former Judge, Punjab and Haryana High Court, 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 Arbitration Act with regard to his independence and impartiality to settle the

disputes between the parties. Learned Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act and shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time.

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

H. No. 113, Sector 10A, Chandigarh.

Present application is, accordingly, disposed of.

July 27, 2022

rts

(LISA GILL)
JUDGE

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