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

**ARB No.229 of 2019 (O&M)
Date of Decision: 10.11.2022**

M/S ANTONY WASTE HANDLING CELL LIMITED

.....Petitioner

Vs

MUNICIPAL CORPORATION AMRITSAR

.....Respondent

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

Present: Mr. M.S. Kathuria, Advocate for
Mr. Partap Singh, Advocate
for the petitioner.

Mr. A.S. Manaise, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent arbitral Tribunal to adjudicate the dispute between the parties.

[2]. During course of arguments, learned counsel for the petitioner submits that instead of appointing an independent arbitral Tribunal, a sole Arbitrator be appointed in order to reduce the cost factor.

[3]. Evidently pursuant to order dated 23.08.2013 passed in

ARB No.78 of 2013, the Deputy Commissioner, Amritsar was appointed as the Arbitrator. The matter was at penultimate stage with written arguments also submitted before the Arbitrator and the matter was listed on 09.08.2022. Till date the award has not been passed.

[4]. The grievance of the petitioner is that the dispute is with the Municipal Corporation, Amritsar and the official Arbitrator is not to be appointed in view of **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's** 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.”

[5]. Learned counsel for the petitioner also by relying upon Section 29(A)(4) of the Arbitration and Conciliation Act, 1996 submits that the award has not been made within the time prescribed and, therefore, there is a deemed termination of the mandate of the Arbitrator.

[6]. During course of arguments both the parties have arrived at a consensus that fresh Arbitrator preferably a retired Hon'ble Judge of the High Court be appointed with a liberty to proceed from the stage where the proceedings were pending before the original Arbitrator. Tentative value of the claim set up by the petitioner is Rs.3,80,48,502/- with interest till date.

[7]. In view of consensus arrived at between the parties, I hereby appoint HMJ Rajiv Narain Raina (Retd.), R/o E8-3 (GF) DLF, The Valley, Sector 3, Panchkula-133301, Mobile Nos.7837049207, 9417008086 as the sole Arbitrator, to resolve the dispute/difference 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 would 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 both the parties equally.

[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 Rajiv Narain Raina (Retd.),
R/o E8-3 (GF) DLF, The Valley,
Sector 3, Panchkula-133301,
Mobile Nos.7837049207, 9417008086

[11]. Petition stands disposed of accordingly.

November 10, 2022
Atik

(RAJ MOHAN SINGH)
JUDGE

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