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

**IOIN-ARB No.139 of 2013 in
ARB No.139 of 2013
Date of Decision: 13.09.2022**

GAMMON INDIA LTD.

.....Petitioner

Vs

STATE OF PUNJAB & ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:None for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. This case has been listed in IOIN category. Main petition i.e. ARB No.139 of 2013 titled '*Gammon India Limited vs. State of Punjab and another*' was decided by the then Hon'ble the Chief Justice of this Court vide order dated 24.01.2014 after noticing relevant facts of the case. Tender of the petitioner was accepted for constructing a High Level Bridge No.4 over SYL Canal for a total sum of costs of Rs.1,34,12,500/-. After completion of works final bill was submitted to respondent No.1 in a sum of Rs.53,41,011/- on 15.01.1991. Respondents slept over the matter for about 5½

years and made payment of Rs.8,76,196/- only. Petitioner is entitled for the balance amount along with interest, costs, compensation and damages.

[2]. Sh. S.K. Bains, Chief Engineer, Irrigation Department, Chandigarh was appointed as the Arbitrator on 26.06.1998. During pendency of the proceedings, he retired from service on 31.05.1999 and no Arbitrator was appointed in his place. At the time of Sh. S.K. Bains, the proceedings were at the stage of culmination. Proceedings were held before the aforesaid Arbitrator with the concurrence of the parties, but ultimately the respondents did not agree to continue the further proceedings.

[3]. In order to put an end to the controversy, the petitioner vide its reply dated 09.03.2001 accepted the appointment of new Arbitrator i.e. Sh. R.P. Aggarwal, Superintending Engineer, Public Health Circle, Patiala. The proceedings before the new Arbitrator could not culminate and no award was passed by the new Arbitrator and the Arbitrator ultimately retired from service on 17.07.2006.

[4]. Respondent No.1 after a lapse of about two years sought to restart the arbitration proceedings vide letter dated 12.06.2008 before another Arbitrator. In order to put an end to the controversy, the petitioner again agreed to the proposal. The

appointing authority being respondent No.2, despite proposal of respondent No.1 did not appoint an Arbitrator till 18.06.2009. When a panel of three Arbitrators was made for the petitioner to choose from, the petitioner selected Sh. Harvinder Singh, Superintending Engineer, Drainage Circle, Patiala to be the sole Arbitrator, but his appointment letter was not issued, compelling the petitioner to approach the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. Taking stock of the situation, the High Court while exercising the powers under Section 11(6) of the aforesaid Act, appointed HMJ Amar Dutt (Retired) as the sole Arbitrator to enter upon the reference and adjudicate the dispute between the parties.

[5]. HMJ Amar Dutt (Retired) has shown his inability to act as an Arbitrator and that is how the present petition has been listed before this Court in IOIN category.

[6]. In view of facts and circumstances of the case, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. 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'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.”

[7]. In my considered opinion, the plea of the respondents 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 aforecited case laws.

[8]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ Rakesh Kumar Garg (Retd.) R/o H.No.417, Sector 35-A, Chandigarh, Mob. No.09780008133, email ID: garg.rakesh52@gmail.com 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.

[9]. The Arbitrator shall 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 the respondents in equal proportion.

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

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

HMJ Rakesh Kumar Garg (Retd.)
R/o H.No.417, Sector 35-A, Chandigarh,
Mob. No.09780008133,
email ID: garg.rakesh52@gmail.com

[12]. Petition stands disposed of accordingly.

September 13, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No