

**ARB-182-2023 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****(228)****ARB-182-2023 (O&M)****Date of decision:- 09.12.2024****Ralhan Construction Pvt. Ltd.****... Petitioner****Versus****Chaudhary Charan Singh Haryana Agricultural University****... Respondent****(123)****CR-7143-2024****Chaudhary Charan Singh HAU, Hisar****... Petitioner****Versus****M/s Ralhan Constructions Pvt. Ltd.****... Respondent****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Rahul Malhotra, Advocate
for the petitioner in ARB-182-2023 and
for respondent in CR-7143-2024

Mr. Nishant Indal, Advocate for
Mr. Anil Mehta, Advocate for the respondent in ARB-182-2023.

Mr. Shreenath A. Khemka, Advocate
for the petitioner in CR-7143-2024.

***********SUVIR SEHGAL, J. (ORAL)**

1. This order shall dispose off both the above noted petitions as they involve common question of law and fact. For the sake of convenience, factual position is being taken from ARB-182-2023.

2. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") for appointment of an Arbitrator.

**ARB-182-2023 (O&M)****-2-**

3. Petitioner is a company registered under the Companies Act, 1956.

It was awarded a contract for construction of Agriculture Business Management Institute and Faculty Transit House at Daultabad, Gurugram by the respondent-University vide letter dated 07.01.2020. Annexure P-1. Clause 24 of the Conditions of the Contract, Annexure P-2, to the letter, Annexure A-1, contains the arbitration clause. Some disputes arose between the parties and in terms of Clause 24.1 (a), petitioner raised claims vide its letter dated 13.04.2022, Annexure P-3, before the designated appellate authority, which were rejected vide letter dated 05.07.2022, Annexure P-4. Petitioner invoked the arbitration clause by sending a notice dated 11.01.2023, Annexure P-5, and vide letter dated 18.03.2023, Annexure P-6, respondent appointed Mr. Ashok Kumar Modi as the sole Arbitrator in exercise of the power conferred upon it under the arbitration clause.

4. Upon notice, petition has been contested by the University by filing a short reply stating that once an independent and impartial Arbitrator has been appointed by the respondent, petition for appointment of another Arbitrator is not maintainable. A stand has been taken that the remedy of the petitioner would lie under Section 14 of the Arbitration Act, which has already been invoked by the petitioner by filing a petition for terminating the mandate of the Arbitrator.

5. Counsel for the petitioner has argued that during the pendency of the instant petition, the mandate of the Arbitrator has been terminated by the Commercial Court, Gurugram, vide order 08.11.2024 (appended at Annexure P-16 in CR-7143-2024), which is subject matter of challenge in the connected petition. Drawing the attention of the Court to Sections 14 and 15 of the Arbitration Act, counsel has contended that a substitute Arbitrator deserves to

be appointed.

**ARB-182-2023 (O&M)****-3-**

6. While opposing the prayer made in the petition, counsel for the University has urged that the petitioner has simultaneously invoked two remedies and it cannot be permitted to pursue the present petition. Assailing order dated 08.11.2024, Mr. Khemka, counsel for the University has contended that the Commercial Court at Gurugram did not have the territorial jurisdiction to entertain the petition under Section 14 of the Arbitration Act. He has placed reliance upon the judgment of the High Court of Delhi in **M/s Kings Chariot Versus Mr. Tarun Wadhwa, Law Finder Doc ID # 2590801**, to assert that the parties had specifically agreed that the jurisdiction of the Courts would be at Hisar and the petition under Section 14 of the Arbitration Act at Gurugram was not maintainable.

7. I have heard counsel for the parties and considered their respective submission, besides examining the documents appended with the petitions.

8. Under Clause 24.1 (a), power to appoint an Arbitrator had been vested with the University. In exercise of the power, University unilaterally appointed a sole Arbitrator without the consent of the petitioner. The appointment of the Arbitrator has been challenged in the present petition filed under Section 11(6) of the Arbitration Act and petitioner filed a separate petition under Section 14, *ibid*, which has been accepted by the Commercial Court, Gurugram vide order passed on 08.11.2024. While terminating the mandate of the Arbitrator, the Commercial Court granted liberty to the parties to get a fresh Arbitrator appointed in accordance with law.

9. Sh. Ashok Kumar Modi was unilaterally appointed as an Arbitrator by the respondent vide letter dated 18.03.2023, Annexure P-6. In



ARB-182-2023 (O&M)

-4-

Central Organisation for Railway Electrification Vs. ECI SPIC SMO**MCML (JV), A Joint Venture Company, 2024 SCC OnLine SC 3219**, a

Constitution Bench of the Supreme Court has held that an arbitration clause that allows one party to unilaterally appoint a sole Arbitrator gives rise to a justifiable doubt as to the independence and impartiality of the arbitrator. Appointment of such an Arbitrator is nonest and cannot hinder this Court from exercising its jurisdiction under Section 11(6) of the Arbitration Act, despite the availability of an alternative remedy. Reference in this regard can be made to **Walter Bau AG, Legal Successor, of the original contractor, Dyckerhoff & Widmann A.G. Versus Municipal Corporation of Greater Mumbai and another, (2015) 3 SCC 800**. Even if the argument of Mr. Khemka is accepted that the Commercial Court at Gurugram did not have the territorial jurisdiction to entertain the petition under Section 14 of the Arbitration Act, there is no impediment for this Court to set aside the invalid appointment and to make a fresh one.

10. As a result of the above discussion, the appointment of Mr. Ashok Kumar Modi, retired Chief Engineer, is declared as nonest and is set aside. In exercise of powers vested under Sections 14 and 15 of the Arbitration Act, this Court appoints Sh. Ravinder Kumar Kaushik, IAS (Retd.), resident of House No. 711, Sector 40-A, Chandigarh, (2nd address – House No. 5524, Sector 38-W, Chandigarh) Mobile No. 9814001762, as a substitute Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

11. The question of territorial jurisdiction canvassed by Mr. Khemka, is left open for determination by the Court in appropriate proceedings.



ARB-182-2023 (O&M)

-5-

12. Both the petitions are disposed off.
13. Parties are directed to appear before the Arbitrator on 20.01.2025, at 11:00 A.M., at the address mentioned above or at any other place, time or day fixed by the learned Arbitrator.
14. Fee shall be paid to the Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
15. Learned Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Arbitration Act.
16. Parties will be at liberty to raise all the claims, counter claims, defences, pleas etc. before the Arbitrator.
17. Needless to mention that all the questions arising between them in this matter will remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
18. Liberty is granted to the parties to request the learned Arbitrator to treat the issue of pre-deposit of security amount, as a preliminary issue.
19. A request letter along with a copy of this order be sent to Mr. Ravinder Kumar Kaushik, IAS (Retd.).

(SUVIR SEHGAL)
JUDGE

09.12.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No