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

**ARB-3-2025 (O&M)
Date of decision: 11.08.2025**

M/S LORD SHIVA CONSTRUCTION COMPANY PVT. LTD.

...Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ankit Grewal, Advocate for
Mr. Akshat Dalal, Advocate for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties pertaining to an agreement entered into between the parties regarding improvement of road by providing 4-laning in Pundri town (3.45 km.) Village Pharal (2.20 km.) (Hon'ble CM announcement code No.10317, 10320 and 10681) and strengthening in balance stretches on Dhand Pundri Rajound Alewa road (MDR-118) in Kaithal District (Road ID-6837, 10151).
2. Learned counsel appearing on behalf of the petitioner submitted that there is a valid agreement between the parties and there also exists valid



arbitration clause i.e. Clause 24, which provides for dispute redressal system that in case of any dispute, the issue shall be raised before the competent authority and if the competent authority rejects the claim, then the matter is to be referred to the Arbitrator. He further submitted that in the present case, the petitioner raised a dispute before the competent authority, who rejected his claim and thereafter, the petitioner filed an application for invocation of the aforesaid arbitration clause by nominating an Arbitrator but no action was taken by the respondents and vide Annexure P-5, it was so stated by the respondents that in pursuance of the aforesaid clause, 2% of the claim amount as per provision of Clause 4(a) of Special Conditions of Contract is to be deposited first by the petitioner. He referred to the judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341** to contend that such a clause cannot be made a mandatory condition for initiating arbitration because the same can always be ignored by the Court being contrary to Article 14 of the Constitution of India, especially in view of the fact that the respondents is the State of Haryana and both the parties are on unequal bargaining positions and therefore, the clause itself is unconscionable and heavily relied upon the judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited (Supra)** in this regard.

3. Learned counsel appearing on behalf of the petitioner further submitted that the parties can always be granted liberty to raise all the claims pertaining to aforesaid pre-deposit of 2% of the claim amount before the learned Arbitrator and the same can always be adjusted at the time of final



decision by the learned Arbitrator, regarding which he has no objection. He also submitted that any independent Arbitrator may be appointed by this Court so as to adjudicate the dispute between the parties.

4. On the other hand, Mr. Chirag Wadhwa, DAG, Haryana submitted on instructions that there is no dispute with regard to the fact that pre-arbitration procedure was adopted by the petitioner and thereafter only he invoked the arbitration clause but the only objection of the State is that as per the arbitration clause, the aforesaid 2% of the claim amount is to be deposited by the petitioner for the purpose of pursuing the arbitration process. He further submitted that even otherwise also the State has no objection in case the parties are directed to raise all the pleas pertaining to the aforesaid pre-deposit of 2% of the claim amount and its adjustment at the time of the final award, if any. He also submitted that subject to the aforesaid liberty being granted to the parties, he has no objection in case any independent Arbitrator is appointed by this Court.

5. After hearing the learned counsels for the parties, this Court is of the considered view that the only issue which was raised by the learned State counsel was with regard to pre-deposit of 2% of the claim amount. However, Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited (Supra)** has held that such kind of condition is unconscionable being result of inequality in bargaining power and it also violates the Right to Equality under Article 14 of the Constitution of India. Therefore, considering the aforesaid facts and circumstances, whereby the only concern of the respondents-State was with regard to pre-deposit of 2% of the claim amount, this Court is of the considered view that the aforesaid



clause is liable to be ignored in light of judgment passed by Hon'ble Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited (Supra)**. The parties shall be at liberty to raise the aforesaid claim before the learned Arbitrator, at any stage, and the learned Arbitrator shall always be at liberty to consider the aforesaid claim, at any stage, including at the time of adjustment or grant or non-grant of claim, if any.

6. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Mr. Justice (Retd.) Harinder Singh Sidhu, a former Judge of this Court, resident of House No.15, Sector 2-A, Chandigarh-160001, Mobile No.8558809912, is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

7. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

8. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

9. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice (Retd.) Harinder Singh Sidhu, a former Judge of this Court.

(JASGURPREET SINGH PURI)
JUDGE

11.08.2025
Chetan Thakur

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