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

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Date of decision: 27.02.2025

KANAV GUPTA

....APPLICANT

Vs.

QE SECURITIES LLP

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Prateek Gupta, Advocate
for the applicant.

Mr. Amandeep Singh Talwar, Advocate
for the respondent.

JAGMOHAN BANSAL, J (ORAL)

1. The applicant through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") is seeking appointment of an Arbitrator to adjudicate the dispute between the parties.

2. The applicant worked as Quantitative Strategist with the respondent from August' 2018 to July' 2022. At the time of appointment, there was an employment agreement executed between the parties. In the agreement dated 01.08.2015 and 30.08.2016 there is arbitration clause. The arbitration clause is reproduced as below:-

"Any dispute, controversy or claim arising out of or in connection with this contract of employment shall be resolved by binding final arbitration under the Rules of Arbitration and Conciliation Act, 1996 by referring the matter to the Sole Arbitrator, Mr Koushik Chowdhury, Advocate High Court at Kolkata. The proceeding of the arbitration will take place in Kolkata."



3. The employment agreement was executed at Gurugram and applicant served at Gurugram. The registered office of respondent is at Gandhi Nagar, though, corporate office is at Gurugram. In the agreement, the name of the Arbitrator was incorporated. It was also mentioned that proceedings will take place at Kolkata.

4. A dispute erupted between the parties and respondent referred the matter to Mr. Koushik Chowdhury, Advocate as per arbitration agreement. The applicant filed objection before Arbitrator which stands dismissed.

5. Mr. Prateek Gupta, Advocate assailing the appointment submits that appointment of Sole Arbitrator by respondent is contrary to judgment of Supreme Court in '*Central Organization for Railway Electrification Vs. ECI SPIC SMO MCML (JV)a Joint Venture Company*', (2024) SCC OnLine SC 3219. The Arbitrator appointed by respondent cannot be called as an independent Arbitrator. There are justifiable doubts about the independence of the said Arbitrator.

6. *Per contra*, Mr. Amandeep Singh Talwar, Advocate submits that Arbitrator has been appointed as per arbitration agreement. The applicant was not a small time employee whereas he was a well paid employee. He consciously signed the agreement wherein it was specifically provided that Mr. Koushik Chowdhury, Advocate would be sole Arbitrator in case of dispute between the parties. Applicant raised objection before the Arbitrator which stands dismissed. The applicant is supposed to approach Court as per Section 14(2) of 1996 Act.

7. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

8. The applicant is heavily placing reliance on judgment of Supreme Court in *Central Organization for Railway Electrification (Supra)*. In the said judgment, it has been clearly held that ineligibility envisaged under Section 12(5)



goes to the root of the appointment, an application may be filed under Section 14(2) of the Arbitration Act to the court to decide on the termination of the arbitrator's mandate. This Court does not fall within the definition of Court as per Section 2(e) of 1996 Act. Paragraphs 114 and 120 of the aforesaid judgment are reproduced as below:-

“114. An arbitrator will not be automatically disqualified in situations where the relationship of an arbitrator with parties does not fall under the categories mentioned under the Seventh Schedule. Yet, either of the parties may have “justifiable doubts” about the independence or impartiality of the arbitrator. The party challenging the appointment of an arbitrator does not need to demonstrate that the arbitrator lacks independence or impartiality. It only needs to show that there are possible “doubts” as to an arbitrator's independence or impartiality.²²¹ The purpose behind incorporating the word “justifiable” under Section 12 was to establish an objective standard for impartiality and independence.²²² Resultantly, the possibility of “doubts” must be “real” in the sense that they should be derived from the objective circumstances disclosed by an arbitrator.

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120. The categories mentioned under the Seventh Schedule are such that it is difficult to distinguish the interests of an arbitrator from those of a party to which an arbitrator is connected. In such cases, the issue is whether the outcome of the arbitration will realistically affect the arbitrator's interests. The law prioritises the objective criterion of independence over the subjective criterion of impartiality. Once it is established that an arbitrator falls under any of the categories mentioned in the Seventh Schedule, they are automatically disqualified without any investigation into whether or not there is any real likelihood of bias. Since the ineligibility envisaged under Section 12(5) goes to the root of



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the appointment, an application may be filed under Section 14(2) of the Arbitration Act to the court to decide on the termination of the arbitrator's mandate.”

9. The Arbitrator is located at Kolkata and he has been appointed as per terms and conditions of the arbitration agreement. The Arbitrator has already commenced its proceedings. The applicant unsuccessfully moved application assailing his appointment. He has right to approach Court for the termination of mandate of Arbitrator in terms of Section 14(2) of 1996 Act. This Court cannot act as Court under Section 14(2) of 1996 Act.

10. In the wake of aforesaid fact and findings, this Court is of the considered opinion that present application deserves to be dismissed and accordingly dismissed.

27.02.2025
manoj

[JAGMOHAN BANSAL]
JUDGE

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