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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB-674-2025(O&M)

Date of Decision: 24.12.2025

GARG CONSTRUCTION COMPANY

....Petitioner(s)

Versus

STATE OF HARYANA THROUGH ITS ADDITIONAL CHIEF
SECRETARY AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashwani Talwar, Senior Advocate with
Mr. Sahej Mahajan, Advocate,
for the petitioner.

Mr. Chirag Wadhwa, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for 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.

2. Mr. Ashwani Talwar, learned Senior Counsel with Mr. Sahej Mahajan, Advocate submitted that there was a contract between the parties, in which there exists an arbitration clause i.e. Clause 24.3, which has been attached as Annexure P-2. He submitted that it has been provided in the aforesaid arbitration clause that in case the work value is more than Rs.10



crores, then the matter will be adjudicated by a Tribunal of three Arbitrators and if the work value is less than Rs.10 crores then the matter will be referred to a Sole Arbitrator. He further submitted that in the present case, although the claim value is more than Rs.10 crores but considering the cost factor, a Sole Arbitrator may be appointed by this Court. He further submitted that a dispute arose between the parties and the applicant invoked the aforesaid arbitration clause by issuing a notice dated 17.09.2025 (Annexure P-11) but no response was received from the respondents and therefore, the present petition has been filed seeking appointment of an independent Arbitrator.

3. On the other hand, Mr. Chirag Wadhwa, learned DAG, Haryana submitted that the respondents have no objection in case a Sole Arbitrator is appointed by this Court. He submitted that there is no dispute with regard to existence of the aforesaid arbitration clause and invocation of the said arbitration clause by way of issuance of a notice vide Annexure P-11.

4. He further submitted that the only objection of the respondents is that in the aforesaid clause itself there is a provision for pre-deposit of claim fee of 2% of the claim amount at the time of invoking the arbitration, which was not adhered to by the petitioner. He submitted that in case this Court is to appoint any Arbitrator then considering the cost factor, an independent Sole Arbitrator may be appointed in this regard.

5. I have heard the learned counsel for the parties.

6. The existence of the aforesaid arbitration clause and invocation of the said arbitration clause by way of issuance of a notice vide Annexure P-11 has not been disputed by learned State counsel. The only objection



raised by the learned State counsel was with regard to pre-deposit of 2% of the claim amount at the time of invocation of the arbitration proceedings. However, the aforesaid clause pertaining to 2% although is in existence but it is an unconscionable clause and this law has been so discussed by judgment of Supreme Court in **Lombardi Engineering Limited versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341.** This Court is also of the considered view that the aforesaid clause of 2% would violate the provisions of Article 14 of the Constitution of India and this 2% pre-deposit itself can always be considered by the learned Arbitrator at an appropriate stage and in case it is so required, then the same can be adjusted at any appropriate stage of arbitration or at the final stage by way of adjustment etc. Therefore, the aforesaid objection is not sustainable for the purpose of appointment of an Arbitrator under Section 11 of the Act. So far as the constitution of Arbitral Tribunal is concerned, as per the aforesaid clause it provides that if the contract value is more than Rs.10 crores then an Arbitral Tribunal consisting of three Arbitrators shall be constituted. However, both the learned counsels for the parties have jointly submitted that considering the cost factor, a Sole Arbitrator may be appointed instead of appointment of any Arbitral Tribunal consisting of three members.

7. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Mr. Justice Ajay Tewari, a former Judge of this Court, resident of House No. 3038, Sector 21-D, Chandigarh and # R-8, Third Floor, Green Park Extension, New Delhi, Mobile No. 9780008141, Email ID: ajaytewarichandigarh@gmail.com, 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.

8. 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.

9. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

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

11. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Ajay Tewari, a former Judge of this Court.

24.12.2025

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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