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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Arbitration Case No. 394 of 2025

Date of decision: 30.10.2026

M/s Gandharvi Builders Pvt. Ltd. ...Petitioner

Versus

The Principal Secretary (UD) & Anr. ...Respondents

Co*ram*

The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.

Whether approved for reporting?

For the Petitioner : Mr. Mohit Thakur, Advocate.

For the Respondents: Mr. Navlesh Verma, Additional Advocate General, for respondent No. 1-State.

Mr. Narender Sharma, Ms. Meenakshi Sharma and Mr. Suraj Sharma, Advocates, for respondent No. 2.

G. S. Sandhawalia, Chief Justice (Oral)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '***the Act***') for appointment of an Arbitrator on account of the Agreement dated 22.08.2012 executed between the predecessor-in-interest of the petitioner and respondent No. 2 for the construction, operation and maintenance of a Multi Level Parking-cum-Commercial Complex at Bilaspur on Built-Operate-Transfer (PPP Mode) basis. The Concession Agreement is annexed as Anexure P-1 and the Novation Agreement is annexed as Annexure P-2. As

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per Arbitration Clause 27.3, the Secretary (Law) to the Government of H.P. is stated to be the nominated Arbitrator.

2. Legal Notice dated 09.05.2024 (Annexure P-3) was served upon the respondents raising the grievance as such on account of the disputes, which had occurred *inter se* the parties and claiming an amount of more than Rs. 3 Crores and bringing to the notice of the respondents that they would be constrained to raise an arbitration dispute under the agreement.

3. The said notice was replied by the respondents on 13.06.2024 (Annexure P-4), counter claiming a sum of Rs.68,68,000/- without interest, till May, 2024, which was stated to be outstanding against the petitioner.

4. In the reply filed by respondent No. 2, it has been mentioned that necessary 30 days notice required under Section 11 of the Act has not been issued and the applicants are in the arrears of Rs. 1,73,27,779/- till 31.01.2026. The objection as such has been raised that the petitioner has not raised any demand to appointment arbitrator(s). It is stated that the applicant is required to follow due procedure, therefore, the petition is not maintainable.

5. Replication has been filed by respondent No. 2, thereby controverting the stand of the respondent and it is submitted that notice having been served upon the respondent No. 2, who has failed to act and, therefore, the only remedy is to

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seek appointment of an Arbitrator. The plea regarding the arrears as claimed is denied. The sending of the notice dated 09.05.2024 (Annexure P-3) is reiterated to submit that it satisfies the requirement as contemplated under Clause 27.3 of the Agreement.

6. Keeping in view the above, the Court is of the considered opinion that both the sides as such are raising their independent monetary claims, it would be necessary to have the same adjudicated by the appointment of an Arbitrator.

7. The issue of formal notice under Section 21 of the Act has already been dealt with by this Court in ***Arb Case No. 622 of 2024***, titled as ***State of Himachal Pradesh and Anr. vs. M/s Sun Shine Construction***, decided on 10.08.2026, while placing reliance of the judgment of the Apex Court. The relevant portion of the said judgment reads as under:-

> *19. The Apex Court recently, in M/s Bhagheeratha Engineering Limited v. State of Kerala (2026) 5 SCC 758, has held that the non-issuance of a notice under Section 21 of 'the Act', would not be fatal to pursuing a claim before an arbitrator. Accordingly, the Court clarified that issuing a Section 21 notice is not a mandatory prerequisite prior to the commencement of arbitration. Instead, it serves a limited procedural purpose, determining the commencement of the dispute for reckoning the limitation period. It operates purely as a statutory mechanism to*

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> *ascertain the exact initiation date. Resultantly, the Apex Court had allowed the appeal and set aside the High Court's order, which had invalidated the arbitral award solely on the ground that a Section 21 notice had not been issued. The State of Kerala had argued that this notice was a mandatory requirement, asserting that both parties to an arbitration agreement have a right to be informed of the dispute before the Arbitral Tribunal is constituted. In such circumstances, this Court is of the considered opinion that the State's application to withdraw the present petition with liberty to file a fresh one on the same cause of action is entirely without any basis. Resultantly, no permission is required and this case has to be decided strictly on its merits."*

8. Thus, keeping in view the above, once notice dated 09.05.2024 (Annexure P-3) had been served upon the respondents, this Court is of the considered opinion that the objection as such raised that a formal notice under Section 21 of the Act is required to have been served, is without any basis.

9. Accordingly, the present petition is allowed and the matter is referred to arbitration. Mr. Harinder Singh Sidhu. Former Judge of the Punjab and Haryana High Court, House No. 15, Sector 2-A, Chandigarh-1600001, Contact Nos. 0172-2740139 and 85588-09912, is appointed as an Arbitrator to adjudicate the dispute between the parties, after his disclosure in writing is obtained in terms of Section 11(8) of the Act and

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only after receipt thereof, of his appointment, as an Arbitrator, shall come into force.

10. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Mr. Harinder Singh Sidhu. Former Judge of the Punjab and Haryana High Court, shall enter into reference, and pass an award in accordance with law.

11. Copy of this order be furnished to the learned counsel for the parties and also be furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

12. It is further directed that the Arbitrator after the proceedings are concluded, shall send the record to the Registrar (Judicial) for keeping the same in safe custody, since the challenge is liable to be raised under the provisions of the Arbitration Act to the award in question and it would be in the interest of justice to preserve the record, whereby the Arbitrator as such has been appointed by this Court.

13. Accordingly, the petition is disposed of, so also pending applications, if any.

(G. S. Sandhawalia)
Chief Justice

30th October, 2026(sanjeev)