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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Arbitration Case No. 1 of 2026

Date of decision: 30.10.2026

M/s Mayanagri Himachal Private Ltd. …Petitioner

Versus

State of Himachal Pradesh …Respondent

Co*ram*

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

Whether approved for reporting?

For the Petitioner : Mr. Anuj Gupta and Mr. Rohit Sharma, Advocates.

For the Respondents: Mr. Gagan Anand, Special Senior Standing Counsel for Mr. Ramanjit Singh and Ms. Simran, Advocates.

G. S. Sandhawalia, Chief Justice (Oral)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '***the Act***') for the appointment of an Arbitrator. The Concession Agreement dated 29.03.2022 was entered between the parties for the Up-gradation, Operation and Maintenance of the Hotel-cum-Cultural Centre at Badagran, Manali on PPP mode.

2. The claim of the petitioner is that he invested Rs. 31.32 Crores in the project and paid Rs. 2.38 Crores towards Annual Concession Fee (ACF). The site had faced repeated

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floods, landslides and heavy rainfall, which damaged the boundary walls, Golf Course area and adjoining land, rendering major portions marshy and unusable. Resultantly, on account of non-repair as such, the petitioner build a Gabion wall and part of RCC wall at its own cost though, this was the responsibility of the respondent-State.

3. On 01.08.2024, severe flood struck and destroyed major parts of the project submerging land, eroding boundaries and caused damage to the project facilities. The project had only operated for about 14 months out of 24 months. Resultantly notice dated 10.09.2025 (Annexure P-5) terminating the Concession Agreement was served upon the respondent-State claiming refund of the Performance Security of Rs. 1 Crore.

4. The petitioner invoked Arbitration Clause under Article 28 for appointment of an independent and impartial Arbitrator. Article 28.02 named the Secretary (Law) as Arbitrator, however, he being a serving Government Officer could not be appointed as an Arbitrator, on account of ineligibility under Section 12(5) read with Seventh Schedule of the Act.

5. In reply, the respondent denied regarding the investment made in the project as such. Regarding Article 27

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of the Concession Agreement, a reference has been made to floods, landslides and extremely adverse weather conditions and provides that each party shall bear its own *Force Majeure* costs. It is submitted that opportunities of personal hearing was given to the petitioner Concessionaire and the petitioner provided some written information/clarification. It is also pointed out that petitioner owes an amount of over Rs. 2.50 Crores towards unpaid Annual Concession Fee (ACF). A reference is also made to the communication dated 22.04.2026 (Annexure R-1), whereby the respondents in sum and substance also proposed three names of retired judges of this Court for being appointed as an Arbitrator.

6. Replication as such has been filed wherein the averments made in the petition have been reiterated and two alternate names of retired Judges of this Court have been proposed.

7. Keeping in view the above, since the claim and counter claim have been raised by both sides and there is no dispute that there exists an Arbitration Clause, the Court is of the considered opinion that it would be appropriate to settle the matter by referring the matter to arbitration for the Arbitrator to go into the said issue.

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8. Accordingly, the present petition is allowed and Ms. Jaishree Thakur, former Judge of the Punjab and Haryana High Court, House No. 36, Sector 8-A, Chandigarh – 160009 , is appointed as Arbitrator to adjudicate the dispute between the parties, after her disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, her appointment, as an Arbitrator, shall come into force.

9. On her giving consent to arbitrate the dispute between the parties as an Arbitrator, Ms. Jaishree Thakur, former Judge of the Punjab and Haryana High Court, shall enter into reference, and pass an award in accordance with law.

10. 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.

11. 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

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interest of justice to preserve the record, whereby the Arbitrator as such has been appointed by this Court.

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

(G. S. Sandhawalia)
Chief Justice

30th October, 2026(sanjeev)