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**(2025) 04 UK CK 0825**

**In the Uttarakhand High Court**

**Case No : Appeal From Order No. 555 Of 2023**

M/s Pir Panchal Construction Pvt. Ltd.

APPELLANT

Vs

Uttarakhand Power Corporation Ltd. And Others.

RESPONDENT

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**Date of Decision : 16-04-2025**

**Acts Referred:**

Arbitration And Conciliation Act, 1996 — Section 9, 9(1)(ii)(d), 9(1)(ii)(e)

**Citation : (2025) 04 UK CK 0825**

**Hon'ble Judges : G. Narendar, CJ;Alok Mahra, J**

**Bench : Division Bench**

**Advocate : Siddhartha Sah, Sanjay Gaur, V.K. Kohli, D.S. Patni, D. Barthwal, Kanti Ram**

**Final Decision : Partly Allowed**

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## **Judgement**

G. Narendar C.J.

1. Heard Mr. Siddhartha Sah, learned counsel for the appellant and Mr. V. K. Kohli, learned Senior Counsel for the respondents.

2. We have perused the order of the Court of Addl. District Judge, Commercial Court, Dehradun rendered in Arbitration Case No.60 of 2023, CG No.60 of 2023. The Commercial Court has observed and held in para no.17 and 18 and passed the following order: -

"17. The Hon'ble Supreme Court in the judgment Mahanadi Coalfields Ltd. vs. M/s IVRCL-AMR JV, 2022 SCC Online SC 960, has held that an arbitration agreement must be in writing, and where no arbitration agreement exists between the petitioner and the respondent, the matter cannot be referred to arbitration.

18. After the above discussion, this court concludes that the petition filed by the petitioner pertains to a matter in respect of which no contract containing an arbitration agreement has been executed between the petitioner and the

respondent(s). Therefore, the petition/ application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996, document no. 3B, is not maintainable under the law and is liable to be dismissed.

Order

The prayer/ application filed by the petitioner, document no. 3B, under Section 9 of the Arbitration and Conciliation Act, 1996, is dismissed.

The parties shall bear their own costs.

3. The patent illegality in the observations can be made out by a bare reading of the preceding paragraph 11 of the said judgment. Para 11 of the judgment reads as under:

"The arbitration agreement in the contract executed between the petitioner and Respondent No. 1 dated 21.09.2017, in Para 29, is as follows:

"ARBITRATION

In case of any question, difference or dispute arises between the contractor & the Engineer regarding above contract, arbitrator will be nominated by MD, UPCL, Dehradun for settlement of the said dispute. The rules of the arbitration shall be as laid down in Indian Arbitration and Conciliation Act 1996."

4. The Commercial Court having categorically admitted the existence of an Arbitration Clause as contained in para 29 of the contract, it could not have proceeded to hold that there was no Arbitration Clause enabling the rejection of the application preferred under Section 9 of the Arbitration and Conciliation Act, 1996.

5. Provisions of Section 9(1)(ii)(d) & (e) of the Act would take within the sweep, even the issue of blacklisting. The blacklisting has an impact of rendering the affected person jobless, as he would be disentitled to make or submit any bids. The Commercial Court, in our prima facie opinion, appears to have missed the bus, and probably on account of a misreading the provisions of Section 9 of the Act.

6. As the issue has not been dealt with and disposed of on merits, we deem it appropriate to allow the appeal in part and set aside the judgment and order dated 25.11.2023 passed by the Addl. District Judge, Commercial Court, Dehradun rendered in Arbitration Case No.60 of 2023 and restore the Section 9 application and remit it back to the Commercial Court for consideration afresh.

7. Accordingly, the appeal is allowed in part and the judgment and order dated 25.11.2023 passed by the Addl. District Judge, Commercial Court, Dehradun rendered in Arbitration Case No.60 of 2023 is set aside and the Section 9 application is restored and remitted back to the Commercial Court for consideration afresh.

8. Pending application, if any, also stands disposed of.

9. There shall be no order as to costs.