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**(2022) 07 UK CK 0156**

**In the Uttarakhand High Court**

**Case No : Arbitration Application No. 09 Of 2021????**

M/s Uttara Awas Yojna A Proprietorship Concern

APPELLANT

Vs

Garhwal Mandal Vikas Nigam

RESPONDENT

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**Date of Decision : 22-07-2022**

**Acts Referred:**

Arbitration & Conciliation Act, 1996 — Section 11(6)

**Citation : (2022) 07 UK CK 0156**

**Hon'ble Judges : Vipin Sanghi, CJ**

**Bench : Single Bench**

**Advocate : Piyush Garg, Sandeep Kothari**

**Final Decision : Allowed**

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## **Judgement**

Vipin Sanghi, J

1) The present application has been preferred under Section 11(6) of the Arbitration and Conciliation Act, to seek appointment of an Arbitrator in terms of the arbitration agreement contained in MOU dated 01.02.2021, entered into between the parties. The parties had entered into the said MOU, where under the applicant was licensed the right to excavate the minor minerals in the mining lot No. 21/1, Tehsil Vikasnagar, Dehradun, in consequence of the tender floated by the respondent. The tenure of the MOU is stated to be for the period 2020-2025 over an area of 123.190 hectare with capacity of eight lakh tonne per mining session. The applicant claims that disputes have arisen between the parties on account of alleged breach of the MOU by the respondent. The applicant claims that the respondent has been raising illegitimate demands on the applicant. The MOU contains an arbitration clause in Clause 92, which reads as follows:

2) The applicant invoked the arbitration agreement while raising his claims on 06.04.2021. However, the respondent did not appoint the Arbitrator in terms of the agreement between the parties. Consequently, the applicant preferred this Arbitration Application on 06.06.2021.

3) Upon issuance of notice, the respondent has filed its counter-affidavit. The respondent has disclosed that the respondent has already appointed an Arbitrator to adjudicate the disputes between the parties vide communication dated 05.10.2021, which has been filed along with the counter-affidavit.

4) The letter of appointment itself records the fact that the applicant has preferred the present Arbitration Application, and consequently, the Arbitrator has been appointed. Since the Arbitrator was not appointed by the respondent within 30 days of the arbitration agreement being invoked, and even by the time when the present Arbitration Application was preferred by the applicant, the respondent lost its right to make appointment of the Arbitrator, and the Arbitrator could be appointed only by the Chief Justice under Section 11(6) of the Arbitration and Conciliation Act. The appointment made by the respondent is, therefore, of no avail. The fact that the respondent has appointed the Arbitrator itself shows that the respondent does not dispute the fact that there is an arbitration agreement between the parties, and that disputes have indeed arisen under the aforesaid agreement, which are referable to arbitration.

5) Accordingly, the present Arbitration Application is allowed. Accordingly, I appoint Mr. Justice Pradeep Nandrajog, Retd. Chief Justice, Bombay High Court, to act as a sole Arbitrator to adjudicate the disputes between the parties arising out of the aforesaid agreement.