

**BEFORE THE ARBITRATOR-CUM-PRINCIPAL SECRETARY TO GOVERNMENT  
OF HARYANA, SCHOOL EDUCATION DEPARTMENT, CHANDIGARH.**

In the matters of:

1. Transline Technologies Pvt. Ltd.

..... Applicant

Versus

Director, Secondary Education-cum-Special Secretary & others

.... Respondents

2. Shriram New Horizons Ltd., New Delhi

..... Applicant

Versus

Director, Secondary Education-cum-Special Secretary & others

.... Respondents

3. Bhupindra Society, Chandigarh

..... Applicant

Versus

Director, Secondary Education-cum-Special Secretary & others

.... Respondents

Present at the time of hearing on 06.01.2015/16.01.2015:

1. Dr. Arvind Shukla, Executive Director & Sh. Abhishek Singh Company Secretary, on behalf of Shriram New Horizons Ltd., New Delhi.
2. Sh. Arun Gupta, Chairman & Sh. Amit Kumar Singh, Advocate, on behalf of Transline Technologies Pvt. Ltd., New Delhi.
3. Sh. Gurmeet Singh Arora, President and Sh. Amit Kumar, AGM, on behalf of Bhupindra Society, Chandigarh.
4. Sh. Hem Raj Satija, Chief Project Officer, ICT on behalf of Director, Secondary Education.

5. Sh. Parveen Sangwan, Assistant Director, ICT on behalf of Director, Secondary Education.

Present at the time of hearing on 06.02.2015:

1. Sh. Balram Dhiman, President, Computer Teacher Welfare Association.
2. Ms. Nirmala Gautam, State Vice President, Computer Teacher Welfare Association.
3. Sh. Diwakar Sharma, State Treasurer, Computer Teacher Welfare Association.
4. Sh. Suresh Nain, Media Spokesperson, Computer Teacher Welfare Association.
5. Sh. M. L. Kaushik, IAS, Director, Secondary Education, Haryana, Panchkula.
6. Sh. Alok Verma, IFS, State Project Director, Haryana School Shiksha Pariyojana Parishad, Panchkula.
7. Sh. Hem Raj Satija, Chief Project Officer, ICT, Secondary Education, Haryana, Panchkula.
8. Sh. Parveen Sangwan, Assistant Director, ICT, Secondary Education, Haryana, Panchkula.

### **Arbitration Award**

Ld. District & Sessions Judge, Panchkula vide its orders dated 17.09.2014 and 22.09.2014 in applications under Section 9 of 'The Arbitration and Conciliation Act, 1996', filed by the three companies while dismissing the petition as withdrawn gave liberty to the said firms to approach the arbitrator for seeking the relief as permissible under Section 17 of the Arbitration Act. The said firms made three separate applications, so as to resolve the issues between the parties. As exactly similar issues are involved, hence the Arbitration Award is being made by this common order. As per clause-27 of the agreement dated 19.08.2013 executed between the service providers and the Director General, Secondary Education, Principal Secretary to Govt. Haryana, School Education Department is the sole Arbitrator.

## 2. Brief facts of the case:

The Department of Secondary Education, Government of Haryana conceptualized a project of ICT Scheme for implementation across 3122 Govt. Senior Secondary Schools and Govt. High Schools with a view to impart ICT education to the students enrolled in the schools. After going through the various processes of inviting tender etc., Letter of Intent (LOI) was issued to these firms on 21.12.2012, which was accepted by the suppliers on the same date. Further, the agreements in the matter between the Director, Secondary Education, Haryana and the three firms, were executed and signed separately on 19.08.2013, according to which the tender document became a part and parcel of the agreement. The sequence of events, as given by the Secondary Education Department is reproduced in the following matrix:

| Date       | Particular of events  |
|------------|---|
| 04.12.2011 | A tender no. 3/10-2011 CEC(3) inviting bids for provision of computer education services in 2622 Govt. High/ Senior Secondary Schools, Haryana was floated by Director, Secondary Education and the same was published on 04.12.2011. |
| 20.12.2011 | Pre Bid meeting held with Service Providers.  |
| 10.01.2012 | Tenders were received from 17 companies.  |
| 10.01.2012 | Technical bids were opened by the Tender Committee.   |
| 02.02.2012 | Evaluation of Technical bids of 17 bidders by the Tender Committee.   |
| 13.03.2012 | Recommendation of the Officers Committee as per evaluation report. Out of 17 bidders, 12 bidders were found qualified and eligible for commercial bid.  |
| 16.04.2012 | Commercial bids submitted by Service Providers opened.  |
| 02.05.2012 | Comparative statement prepared by the office indicating L1, L2 and L3 approved.   |
| 07.07.2012 | Validity of tender extended for next 60 days.   |
| 08.10.2012 | The High Powered Purchase Committee in its meeting held on  |

|            | <p>8.10.2012 under the Chairmanship of Hon'ble Finance Minister with the following three lowest bidders in order or merit namely: (1) Shriram New Horizons Ltd. (L1), (2) Transline Technologies Ltd. (L2), and (3) Bhupindra Society (L3) asked the bidders at position L2 &amp; L3, if they were willing to match the lowest aggregate rate quoted by L1 for providing computer faculties and courseware per faculty per month i.e. Rs. 14,403/- as offered by Shriram New Horizons Ltd.(L1). Transline Technologies Pvt. Ltd. (L2) and Bhupindra Society (L3) agreed to bring down its rate, so as to match with that of L1. Thereafter, the committee decided to allot the work of providing computer faculties to the parties and the zones as per their preference.</p> |                  |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
|------------|---|------------------|--------------------------|-------|---|---------------------------|------------------|---|---------------------------------|--------|---|-------------------|--------|
| 21.11.2012 | <p>Letter of Intent (LOI) was issued on 21.11.2012 to all the three Service Providers indicating brief terms and conditions and zones-wise details:</p> <table border="1" data-bbox="400 1093 1428 1323"> <thead> <tr> <th>Sr. No.</th> <th>Name of Service Provider</th> <th>Zones</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Shriram New Horizons Ltd.</td> <td>Ambala &amp; Gurgaon</td> </tr> <tr> <td>2</td> <td>Transline Technolgies Pvt. LTd.</td> <td>Hissar</td> </tr> <tr> <td>3</td> <td>Bhupindra Society</td> <td>Rohtak</td> </tr> </tbody> </table> <p>The LOIs accepted by all the three Service Providers.</p>   | Sr. No.          | Name of Service Provider | Zones | 1 | Shriram New Horizons Ltd. | Ambala & Gurgaon | 2 | Transline Technolgies Pvt. LTd. | Hissar | 3 | Bhupindra Society | Rohtak |
| Sr. No.    | Name of Service Provider  | Zones            |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
| 1          | Shriram New Horizons Ltd.   | Ambala & Gurgaon |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
| 2          | Transline Technolgies Pvt. LTd.   | Hissar           |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
| 3          | Bhupindra Society   | Rohtak           |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
| 17.02.2013 | <p>It was stipulated in the minutes dated 08.10.2012 of High Powered Purchase Committee that only qualified computer faculty will be allowed to work by the Department. An agency like CDAC, HARTRON, NIELIT or SPIC will conduct a qualifying test for all the candidates whose names will be forwarded by Service Providers to the Department for written test under the supervision of the Department. Accordingly, written examination was got conducted through C-DAC Mohali under the supervision of the Department on 17.02.2013.</p>  |                  |                          |       |   |                           |                  |   |                                 |        |   |                   |        |
| 22.03.2013 | <p>C-DAC Mohali submitted the result in sealed cover to the Department and a committee was constituted to finalize the</p>  |                  |                          |       |   |                           |                  |   |                                 |        |   |                   |        |

|            |  |
|------------|--|
|            | <p>result by deciding cut-off percentage of marks for engagement of computer faculty. The committee recommended the cut-off percentage as 35% and above marks obtained by the candidates for the engagement of computer faculty. Only 2643 candidates were found eligible who scored 35% and above marks against the total requirement of 2622 faculties (The number of Computer Faculty was later increased to 3122). Merit wise and Roll No. wise result was delivered to the Service Providers. They were further advised that recruitment process to meet the shortfall and to maintain a common pool may be arranged by inviting fresh application from the eligible candidates to conduct another examination through C-DAC.</p> |
| 26.05.2013 | <p>Another written examination through C-DAC, Mohali was conducted under the supervision of the Department. C-DAC Mohali submitted the results on 10.06.2013 and the same was again got approved from the Committee of Officers. 2372 candidates got 35% and above marks.</p>  |
| 05.03.2014 | <p>After the implementation of the 'Scheme' started, disputes arose between the service providers and the computer faculty. The written complaints submitted by the computer faculty were referred to the Departmental Enquiry Officer for inquiry. Enquiry Officer conducted the enquiry by calling all the three Service Providers and the representative of Computer Teachers Welfare Association/ Individual complainants and submitted the enquiry report.</p>  |
| 03.07.2014 | <p>Default notices were served to the Service Providers by the Department intimating that non-compliance of the order shall be construed as breach of contract agreement leading to initiate appropriate action for termination proceedings.</p>   |
| 15.07.2014 | <p>In response to default notices, one Service Provider, namely, Bhupindra Society filed a case in the Court of District &amp; Sessions Judge, Panchkula for stay on termination proceedings and for invoking arbitration clause prior to termination. The Court fixed</p>   |

|            |   |
|------------|---|
|            | next date of hearing as 30.07.2014 as per its order dated 15.07.2014. Transline Technologies Pvt. Ltd. and Shriram New Horizon Pvt. Ltd. also joined the proceedings as 15.07.2014.   |
| 04.08.2014 | Since all the service providers sought a meeting with the Director, Secondary Education, Haryana, accordingly, a meeting was held on 31.07.2014. Minutes of this meeting held on 31.07.2014 with all the service providers were circulated vide letter dated 04.08.2014. These service providers were directed to comply with the provisions of the contract on or before 08.08.2014 in respect of refund of security amount and to settle issue regarding deduction of ESI/PF.   |
| 08.08.2014 | Court of District & Sessions Judge, Panchkula passed an order as per which the Department was directed not to terminate the agreement except in accordance with the terms and conditions of the agreement including giving a mandatory notice of 30 days. Next date of hearing was fixed on 21.08.2014.   |
| 08.08.2014 | One of the three Service Providers filed petition for Arbitration.  |
| 21.08.2014 | The Department filed its reply on 21.08.2014 in the Court of Ld. District & Sessions Judge, Panchkula. The Ld. District & Sessions Judge, Panchkula vide its order dated 21.08.2014 asked the Respondent No. 2 & 3 to file replies and to appear on 26.08.2014.   |
| 26.08.2014 | Ms. Sumedha Kataria, Addl. Director, Administration appeared in the Court and moved an application for setting aside the ex-parte order dated 30.07.2014 and requested some time to file the reply. She also stated that Department has no intention to terminate the agreement against the procedure provided in the agreement itself. She also stated that the Department is ready to look into the issues and to resolve the same if Service Providers come forward. The next date of hearing was fixed as 17.09.2014. |
| 16.09.2014 | Written statement submitted by the Department in the Court of District & Sessions Judge, Panchkula.   |
| 17.09.2014 | Ms. Sumedha Kataria, Addl. Director, Administration appeared  |

|            |   |
|------------|---|
|            | in the Court on 17.09.2014 in the matter of Transline Technologies Vs. DSE and stated that the petitioner has already invoked arbitration. In view of this, as per the Court Order of 17.09.2014, the petition was dismissed as withdrawn. It is further recorded in the Court's Order that "However, the petitioner is at liberty to approach the arbitrator to seek interim relief as permissible under Section 17 of the Arbitration Act. However, till the time, Arbitrator pass an order on the interim measures on the basis of an application, if any, filed by the petitioner, respondents will not cancel the agreement except as per the terms and conditions of the contract". |
| 22.09.2014 | The Ld. District & Sessions Judge, Panchkula passed similar orders as passed on 17.09.2014 in respect of two other applications filed by M/s. Bhupindra Society and Shriram New Horizons Ltd.   |

### **3. The Dispute:**

A perusal of the above facts would reveal that the real dispute started with the issuance of the communication dated 03.07.2014 called default notices by the Department and a further communication dated 04.08.2014 communicating decision of the Department regarding various infirmities and irregularities committed by them in the form of charging security amount, training fee by Shriram New Horizons Ltd., one of the service providers and further, charging excess money by way of examination fees and not supplying course content in the form of books, etc. and asking for compliance of the same. As a consequence of the same, the said service providers took recourse to filing applications in the Court of District & Sessions Judge, Panchkula, wherein liberty was given to file application before the Arbitrator, if the service providers so desire.

### **4. Arguments by the parties:**

By a written notice, all the three service providers and the Department were asked to attend the arbitration proceedings before me on 06.01.2015 which were

also continued on 16.01.2015. The submissions of these service providers are as under:-

- a) The representative of Transline Technologies Pvt. Ltd. advanced the following arguments in support of its contentions:
  - i) So far as the issue of charging Security Deposit is concerned, it was impressed upon that it is a standard practice, wherein the adoption of safeguards for avoiding misuse of the assets owned by the Government is the responsibility of the service providers. It was further stated that the security deposit so collected is only to ensure that the faculties render the education to the children in a professional manner without any unscheduled leave or exiting from the very employment itself without serving the service providers the mandatory notice and giving them opportunity to arrange for an alternate.
  - ii) Regarding the courseware, it was stated that the delay in providing the courseware is due to newly recommended books by the Department from Wadhvani Foundation. It was also impressed upon that the said newly recommended books are in English Language and are contrary to the syllabus as mentioned in the tender document.
  - iii) Regarding making undue deduction from the minimum salary, it was stated that the deductions have been made, as per clarification given by the Department, being statutory contribution in respect of both employee and employer.
- b) The representative of Shriram New Horizons Ltd. advanced the following arguments in support of its contentions:
  - i) Regarding the charging of security deposit, the submissions made by Transline Technologies Pvt. Ltd., were reiterated.
  - ii) Regarding charging training expenses, it was stated that all the computer labs are equipped with EduBoss operating systems and has been developed by CDAC for the Department. It was further stated that since this OS is not a commonly used system, so their firm offered optional training to the Computer Faculties before their joining. It was also submitted by them that



the firm had to meet rental of training venue, cost of computer faculty and other facilities, etc. and hence, a paltry amount of Rs. 2,250/- has been charged. It was also stated that there is no bar in the contract agreement on the service provider from providing such training at cost.

- iii) Regarding the courseware, the submissions made by Transline Technologies Pvt. Ltd., were reiterated.
- iv) Regarding making undue deduction from the minimum salary, the submissions made by Transline Technologies Pvt. Ltd., were reiterated. It was also stated that both EPF and ESI shall be deducted from the minimum salary of Rs. 12,000/- as per opinion obtained from Advocate - on Record of Supreme Court of India. The legal opinion dated 31.03.2014 signed by Shri Amit Kumar, Advocate on Record has also been submitted.
- c) The representative of Bhupindra Society advanced the following arguments in support of its contentions:
  - i) Regarding the charging of security deposit, the submissions made by Transline Technologies Pvt. Ltd., were reiterated.
  - ii) Regarding the courseware, the submissions made by Transline Technologies Pvt. Ltd., were reiterated.
  - iii) Regarding making undue deduction from the minimum salary, the submissions made by Transline Technologies Pvt. Ltd., were reiterated. However, it was admitted that if the Department is ready to bear EPF (Employer Share) which has become mandatory w.e.f 1<sup>st</sup> September, 2014 due to enhancement of limit from Rs. 6,500/- to Rs. 15,000/- per month and in the larger interest of all the stakeholders, they committed during proceedings to bear 4.75% on account of ESI employer share.

All these service providers have given their written representation too at the time of hearing/ in advance.

## **5. Points raised by the Computer Faculty:-**

Though the computer faculty is not a party to the contract executed between the service providers and the Department but when an application dated 22.01.2015 was submitted by the Computer Teachers Welfare Association,

Haryana to hear their version before announcing Arbitration Award, it was thought desirable to hear them too. Accordingly, they were asked to come on 06.02.2015 for presenting their case. Four representatives appeared before me and stated as under:-

- i) Rs. 750/- has been charged as application fee by these firms, whereas as per clause 2.2.3 (ii) of the tender document, Rs. 250/- has been fixed as the application fee by the Department and in this way, Rs. 1.25 crore have been charged extra.
- ii) Rs. 24,000/- has been charged as Security in violation of the contract and accordingly, more than Rs. 8 crore have been deducted from the remuneration illegally.
- iii) Rs. 2,250/- has been charged as training fee by Shriram New Horizons Ltd. from 1200 computer faculties and as a consequence of the same, Rs. 27 lacs have been charged illegally in the name of imparting training, whereas there is no such provision in the contract agreement.
- iv) No books have been supplied to the students till date by the three firms costing approx. Rs. 100/- per book per session and in this way, embezzlement to the tune of about Rs. 13 crores has been made.
- v) The three firms have deducted the entire amount of ESI @ 6.5% from the remuneration of the employees and the same has also not been deposited with the Employees State Insurance Corporation. It was further impressed upon that this has resulted in embezzlement to the tune of Rs. 2.5 crore in one year.
- vi) Female Computer Faculties, who have availed maternity leave, have been removed from the service by these firms.
- vii) Teachers, who have raised voice against the illegalities committed by these firms, have been transferred to far off places.
- viii) Transline Technologies Pvt. Ltd. has not disbursed the remuneration for the month of January and February, 2014 till date, though the said amount has been paid to them on 26.03.2014.

Finally, it was impressed upon and pleaded that keeping in view the academic qualifications of these computer teachers, they should be absolved of the responsibilities through these firms and absorbed in School Education Department as regular employees.

**6. Submissions made by the Department:**

- i) The service providers have not maintained professional ethics and have involved themselves in financial impropriety and irregularities right from the beginning.
- ii) The charging of security amount of Rs.24,000/- from each of the computer faculty is illegal as it is not covered under the agreement.
- iii) Similarly, the charging of training fees by Shriram New Horizons Ltd. is also illegal.
- iv) The service providers were entitled to deduct only statutory deductions in respect of employee's share and deduction of even employer's share from their salaries is totally illegal. It was also stated that though deductions on account of ESI have been made but no ESI Cards to any of the computer faculty has been got issued till date.
- v) No books have been supplied by the service providers as yet though the contract is in force since 19.08.2013.
- vi) It was also informed that the commitment level amongst the computer faculty has been lacking to a great extent which has also been observed by the Officers of the Department during various Schools Inspections. The computer faculty has engaged itself in agitation instead of teaching the students for their personal motives i.e. to get them absorbed in the Department. Consequently, the objective of implementation of ICT education in the Schools has not been achieved.

In view of the above, it was prayed that the contract/agreement dated 19.08.2013 may be terminated.

## **7. Framing of issues:**

After going through the facts of the case, contents of the file, contract executed in the matter, various correspondence made by the Department as a consequence of getting fact finding enquiry got conducted on the complaints of the Computer Faculty, orders dated 17.09.2014 and 22.09.2014 passed by Ld. District & Sessions Judge, Panchkula, applications made by the three service providers as a consequence thereof before the Arbitrator, and submissions made by all the parties at the time of hearing orally and/ or in writing; before arriving at a conclusion, the following issues need to be decided in the matter:

- i) Whether the three firms were justified in charging Rs. 24,000/- as security deposit?
- ii) Whether Shriram New Horizons Ltd. was justified in charging Rs. 2,250/- as training fee?
- iii) Whether the three service providers were justified in deducting entire amount of ESI @ 6.5% entirely from the employees i.e. Computer Faculties?
- iv) Whether the three service providers have violated the terms of contract by not supplying the books to the students running into lacs?
- v) Whether it was incumbent upon the service providers to deposit EPF as per Employers' as well as Employees' share, as per terms of the contract?
- vi) Whether the three service providers have collected application fee to the tune of Rs. 750/- per candidate in conformity with the contents of the contract/tender document, etc.?
- vii) Whether the objective with which the entire scheme was floated and the contract dated 19.08.2013 was signed has been achieved or is capable of being achieved in the given circumstances?

## **8. Findings on the issues:**

I have given thoughtful consideration to each and every issue and consulted the record of the Department. Wherever necessary, clarifications have been sought from the Department in writing as well as orally and my findings on seven issues framed in Para No.7 are as under:-

- i) As regards the first issue, there is no shadow of doubt that the service providers were not entitled to charge security amount under any clause of the contract or the tender document in any form. However, it is also a fact that the service providers were required to adopt safeguards for avoiding misuse of the assets owned by the Department. Moreover, for unauthorized absence upto three days of the computer faculty, there is a provision of penalty of deduction of salary and beyond that, a penalty of Rs.500/- per day alongwith deduction of salary. Hence, it is held that the service providers were entitled to demand security from its employees which was fixed by them equivalent to two months salary i.e. Rs.24,000/- but the manner in which it was asked is not at all appropriate. The security could have been obtained by means of Surety Bond or at best, a Bank Guarantee but charging of cash from the teachers who were unemployed was not at all desirable. Though the service providers have contended that this security amount has been deducted in three installments from their remunerations but there is overwhelming evidence on record that the computer teachers were made to pay the same in advance. In some cases, even post -dated cheques in respect of two installments have been taken but Ist installment of Rs.8,000/- has been taken before their joining. Therefore, it is held that taking payment in cash/through cheque from the computer faculty was not in accordance with the spirit of the contract as well the normal terms of employment. It has caused avoidable financial stress for the computer faculty and has also led to avoidable disputes. Therefore, it is directed that the security amount charged from the computer faculty should be returned within 30 days from today and in case the contract is continued with the Department, they will take Surety Bond/Bank Guarantee as per mutual understanding with the Department.
- ii) As regards the second issue, the arguments given by Shriram New Horizon Ltd., for charging Rs. 2,250/-, so as to impart training in the EduBoss operating system, not commonly used, in addition to meeting out various other expenditure for the training, is also not at all tenable in

view of the fact that the contract executed in the matter does not find an *iota* of mention anywhere. Rather, it was incumbent upon the service providers to set up a Training-cum-Orientation Centre for training of its faculty during summer/winter holidays as per the School Calendar. Obviously, the training was to be conducted at the cost of the service providers. The charging of this training fees by one of the service providers is totally illegal which should be refunded to the computer faculty within 30 days from today by Shriram New Horizons Ltd.

iii) As regards the third issue, para 3(i)(c) of the agreement states as under:-

‘There will be no deductions from the salary other than the statutory obligations like Provident Fund (PF), ESI etc. as per Government Rules/ instructions as applicable from time to time.’

Further, it is clear that ESI deductions from wages are to be borne @ 1.75% by the employees, whereas the employer’s contribution is to the extent of @ 4.75%. Furthermore, there is no denying the fact that all the three service providers have been deducting the entire amount of 6.5% exclusively from the computer faculty in complete violation of the provisions of ‘The Employees’ State Insurance Act, 1948 (34 of 1948)’. It is well settled law that the deduction from the salary of an employee can be done only in accordance with the law and the law does not permit deduction of employer’s share from the salary of any employee. The legal opinion given by Shri Amit Kumar, Advocate on Record, Supreme Court of India is totally misplaced and is not in accordance with the law of the land. Hence, the deduction of employer’s share from the salary of computer faculty is held to be illegal.

It has also been found that no ESI card has been issued to any of the computer faculty and therefore, inference can safely be drawn that no amount has been deposited with ESIC. No evidence was given to the contrary by the service providers at the time of hearing. Hence, it can be

easily inferred that all the three service providers have involved themselves in financial embezzlement in this regard. They are directed to refund the deductions done on account of employer's share from the salary of the computer faculty within 30 days from today and to deposit deductions already done on account of ESIC within 30 days from today in accordance with the law.

- iv) As regards the fourth issue, it is clear that the books in any form have not been supplied to the students even though a period of almost two years of complete two sessions has elapsed. However, it is true that the Department at its own level has not been able to finalize the course contents as per the terms of the contract till date, thus enabling them to print the books and distribute the same to the students well in time. As per the tender, the books from Class 6 to 8 were to be printed in Hindi and from Class 9 to 12 in English and total number of pages of books from 6 to 12 were 401. However, the Department communicated entirely different set of books and mostly on different software which were running into 1071 pages. Even the books from Class 6 to 8 were directed to be in English language and therefore, the service providers did not accept the same and represented against it. The new sets of books as per the terms of contract have not been finalized by the Department till date. Therefore, the service providers cannot be held guilty on this count. Nonetheless, huge savings have been made by the service providers by not getting these books printed for two Academic Sessions and therefore, the Department is directed to deduct the cost of books in accordance with number of pages as per tender documents from the bills of the service providers. The cost of books can be got calculated from the Printing & Stationery Department, Haryana. At the same time, Director, Secondary Education is directed to finalize the course contents within 30 days from today so that same can be implemented atleast from the next Academic Session.
- v) As regards the fifth issue, from the perusal of sub- paragraph 6 of paragraph 26 read with sub paragraph 2 of paragraph 26A of the

Employees' Provident Funds Scheme, 1952, it is clear that the said scheme was optional for these employees, in view of the fact that they have been getting remuneration to the tune of Rs. 12,000/- per month, quite in excess of the statutory limit of Rs. 6,500/- per month applicable at the time of signing of the contract on 19.08.2013. Though a mention of the same has been made in the agreements executed with the three service providers but no crystal clear inference can be drawn about the mandatory adoption of the scheme at that time. Accordingly, it cannot be said that the scheme was applicable to these categories of employees, in the absence of any categorical decision in the matter. Needless to mention here that with the amendment carried out vide Gazette Notification no. GSR 608(E), dated 22.08.2014 of Ministry of Labour and Employment, Government of India in the Employees' Provident Funds Scheme, 1952 as Employees' Provident Funds (Amendment) Scheme, the said limit of Rs. 6,500/- has been enhanced to Rs. 15,000/- per month w.e.f. 01.09.2014 and made applicable accordingly to such categories of employees. Therefore, w.e.f. 01.09.2014, the liability of statutory Provident Fund on account of employer's share shall have to be borne by the Department as these employees have been covered under the Employees Provident Fund Scheme subsequent to the signing of the contract on 19.08.2013 when the service providers could not have envisaged this liability.

- vi) As regards the sixth issue, in the pre-bid meeting held in the matter, it was clarified by the Department that the bidder will have to pay the actual fee of monitoring agencies to be engaged by the Department for conducting examination of the computer faculty which would be Rs. 250/- per candidate approximately. Further, from the perusal of the advertisement made by the service providers in the matter, it has been observed that Shriram New Horizons Ltd. has mentioned the application fees (non-refundable) to the tune of Rs. 750/-, whereas Transline Technologies Pvt. Ltd. has also made advertisement of the same amount to that effect. Though no specific amount has been fixed by the



Department, yet it was incumbent on the part of the service providers to have got the same fixed in consultation with the Department, so as to ensure transparency in the matter in which the service providers have failed altogether. The Director, Secondary Education is directed to get the details of expenditure incurred by the service providers on this count and if any excess amount has been charged on this count from the computer faculty, same should be refunded to them. This exercise be completed by the Director, Secondary education within 90 days from today.

- vii) Various shortcomings have been observed not only on the part of the service providers but also on the part of the Department while implementing the Scheme. Though various lapses which are quite serious in nature have been observed on the part of service providers, it is also a fact that the Department has not been regular in making payments to the service providers right from the beginning. As per Clause-12 of the contract, the payment for the preceding month is required to be made to the service providers in the following month subject to the condition that the service provider submits its claim within a week. It is on record that though the bills for August – 2013 were submitted by Bhupindra Society on 26.11.2013, by Transline Technologies Pvt. Ltd. on 09.12.2013 and by Shriram New Horizons Ltd. on 20.01.2014 but this payment was released by the Department only on 03.03.2014 i.e. with considerable delay. Infact, the first payment was released by the Department on 03.03.2014 in respect of bills submitted by the service providers from August – 2013 to December – 2013. Since this amount was not paid to the service providers, they also did not pay salaries to the computer faculty which led to the agitation by the computer faculty w.e.f. 25.02.2014. It was only after the Department released the payment that the computer faculty ended its agitation in March, 2014. Therefore, the seeds of discontentment were sown in the very beginning. The payments for January and February, 2014 were released on 26.03.2014 and the bills for March, 2014 were paid in July, 2014. In the meantime, because of the impending elections to the

Parliament and the State Assembly, the computer faculty sensed an opportunity and started agitating against the service providers and for their absorption in the Department. They refused to take payment through the service providers after March, 2014 and that is why, in the peculiar facts and circumstances of the case, the Department resorted to direct payment to the computer faculty in respect of April and May, 2014 which was released in August, 2014. This step is not at all in conformity with the terms of the contract and raised hopes of these computer faculty to get absorbed in the Department. So much so that when the Department called the computer faculty for hearing their grievances on 27.06.2014, they did not attend hearing even though the senior Officers kept waiting. It was communicated by them that they were not interested to serve the same faculty providers even if issues raised by them were resolved as they apprehended future exploitation and victimization in the hands of the service providers. They again requested to free them from the service providers and that Government should take them under direct control. This has been recorded on the noting file of the Department at page-334. Similar stand has been taken by them when they appeared before me on 06.02.2015. It is well known that computer faculty has been agitating regarding their issues but even if the amount wrongly deducted by the service providers is returned to them and action as per terms of contract is taken against the service providers, they will not work through the same service providers and as these computer faculty stated time and again 'under any circumstance'.

Failure of the contract is writ large on the fact of it because even though crores of rupees of taxpayers' money has been paid to these computer faculty through service providers/directly and the liability on account of unpaid amount is outstanding against the Department but on the ground, practically no ICT education, as per objective of the Scheme has been imparted to the students. The Scheme was launched with noble objective of imparting the ICT education to the students of Class 6 to 12 which is demand of the modern times. Neither any course books have

been got printed nor any evaluation of the teaching done by these computer faculty has been carried out till date. As per clause-7 of the contract, one online educational portal was to be developed by these service providers which would have acted as online assessment engine for conducting exams and uploading the results on the portal. After this assessment, joint certificates were required to be issued by the service providers and the Department to each successful student by 15<sup>th</sup> April of each year. This online educational portal, unfortunately, has not been developed by the service providers till date. Moreover, as per clause 8 of the contract, the quality of teaching and learning level is required to be assessed by the Department through its designated agency from time to time on sample basis. In addition, the evaluation of ICT programme was required to be done and audited through third party by the Department as per the guidelines of MHRD in terms of clause 11. However, due to the on-going agitation by these computer teachers since February, 2014, the Department did not conduct any assessment as envisaged in this contract. There are other failures also on the part of the service providers like non provision of Training Centres as per clause 6 of the contract and providing training to its faculty as well as to the School teachers. The computer faculty cannot also be absolved for the failure of this Scheme till date because due to impending elections to Parliament and State Assembly in 2014, instead of coming forward to resolve their issues as per the terms of contract, their main emphasis was on not only getting back the illegal deductions made by the service providers but on becoming Govt. Servants by any means. The computer faculty is still adamant on its stand that they will not serve under these service providers at any cost and therefore, in these circumstances, one can safely conclude that not only the contract has failed to achieve its stated objectives till date but it is not capable of being implemented during remainder period of its contract till March, 2016. The Department is advised to terminate this contract with immediate effect after following due process. At the same time, it must ensure that the deductions illegally done by these service providers are refunded to the computer

faculty as directed above from their pending payments and if need be, by invoking Bank Guarantees of the service providers which are still valid. After termination of the contract, the decision regarding continuation of the computer teachers engaged through these service providers will have to be taken by the Government separately as this is outside the scope of these arbitration proceedings.

Arbitration Award is announced today in above terms.

Chandigarh, the dated  
16<sup>th</sup> February, 2015.

**(T.C. GUPTA, IAS)**

Arbitrator

cum-Principal Secretary to Govt. of Haryana,  
School Education Department, Chandigarh.

A copy is forwarded to the following:-

1. The Director, Secondary Education, Haryana, Shiksha Sadan, Sector 5, Panchkula.
2. Transline Technologies Pvt. Ltd., D-91/7, Okhla Industrial Area, Phase-I, New Delhi-110020 through email at [info@translineindia.com](mailto:info@translineindia.com) as well as through Registered Post.
3. Shriram New Horizons Ltd., UGF, South Wing, NBCC Place, Bhishma Pitamah Marg, New Delhi-110003 through email at [arvind.shukla@nhindia.com](mailto:arvind.shukla@nhindia.com) as well as through Registered Post.
4. Bhupindra Society, SCO No.162-163, Sector 9, Madhya Marg, Chandigarh through email at [info@bhupindrasociety.com](mailto:info@bhupindrasociety.com) as well as through Registered Post.
5. Shri Balram Dhiman, President, Computer Teachers Welfare Association, Haryana, VPO. HOLI, Tehsil Barara, Distt. Amabala-133201 (Haryana) through email at [ctwaharyana7@gmail.com](mailto:ctwaharyana7@gmail.com) as well as through Registered Post.