

**Court No. - 46**

**Case :-** ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 161 of 2023

**Applicant :-** M/S Sri Ram Construction

**Opposite Party :-** U.P. Jal Nigam (Rural) And 4 Others

**Counsel for Applicant :-** Pranab Kumar Ganguli

**Counsel for Opposite Party :-** Sanjay Kumar Om

**Hon'ble Ashwani Kumar Mishra,J.**

1. This petition has been filed with a prayer to appoint an arbitrator on the ground that there exists an arbitration clause in the contract awarded to the applicant for construction of a overhead water tank and that a dispute has arisen between them.

2. Learned counsel for the applicant states that the contract number herein is ten.

3. Sri Ganguli, appearing for the applicant submits that similar dispute has arisen in respect of Contract No.9, inter-se between the parties in respect of which an arbitration application has been filed before this Court under Section 11 No. 144 of 2020 which has since been allowed by following order passed on 18.8.2023:-

*"Heard Sri Ashutosh Ganguly, holding brief of Sri Amrendra Pratap Singh, learned counsel for the applicant and Sri Sanjay Kumar Om, learned counsel for the respondent.*

*This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.*

*It transpires that an agreement was duly executed between the parties, which contains an arbitration clause, which is annexed as Annexure- 9 to this petition. On account of dispute having arisen between the parties, the applicant made a claim before the Superintending Engineer for reference of dispute to arbitrator. Since no arbitrator has been appointed, as such the applicant has filed the present petition.*

*Sri S.K.OM, learned counsel for the respondent states that arbitrator could either be the Managing Director of U.P. Jal Nigam or an officer appointed by him, and since no specific request has been made before the Managing Director for appointing an arbitrator, as such this petition is not maintainable.*

*Learned counsel for the applicant has invited attention of Court to the contract, which is signed on behalf of U.P. Jal Nigam by the Superintending Engineer. The request, accordingly, has been made to the Superintending Engineer for appointment of an arbitrator. By virtue of section 12(5) of the Act of 1996 readwith Seventh Schedule the Managing Director can neither act as Arbitrator nor his nominee can be appointed as arbitrator. Since the*

*agreement is between the applicant and the Superintending Engineer, the request made to such authority for appointment of arbitrator would constitute sufficient cause for filing of the present petition. As the existence of arbitration clause is undisputed and the parties had failed to appoint an arbitrator, as such this petition is liable to succeed and is, accordingly, allowed.*

*Accordingly, Justice A.K. Tripathi (Retd. Judge), R/o-AD-6, Ekanki Kunj, ADA Colony, Muir Road, Rajapur, Allahabad, Mobile No.9415253690, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11-A of the Arbitration and Conciliation Act.*

*The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties".*

4. Submission is that issues of fact being similar, this Court may appoint same arbitrator to deal with the present controversy also.

5. Sri Akash Chandra Maurya, Advocate holding brief of Sri Sanjay Kumar Om for opposite party no.4, Superintending Engineer, U.P. Jal Nigam, 7th Circle, Varanasi does not dispute the aforesaid contention nor the prayer for appointment of arbitrator is seriously opposed.

6. In that view of the matter, it would be appropriate that the same arbitrator be appointed to decide the present dispute also.

7. Accordingly, Justice A.K. Tripathi (Retd. Judge), R/o-AD-6, Ekanki Kunj, ADA Colony, Muir Road, Rajapur, Allahabad, Mobile No.9415253690, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11-A of the Arbitration and Conciliation Act.

8. The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

**Order Date :- 12.10.2023**

Kumar Manish.