

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No.1 of 2017

Delhi Telecom Private Limited, through its Director Sanjeev Kumar & Manager R.P. Tiwari, D-2/3. Okhala Industrial Area, Phase-II, New Delhi-110020.

---- Applicant

Versus

1. South Eastern Central Railway, Through Controller of Stores, Department GM Annexe, Bilaspur (C.G.) 495004.
2. General Manager, South Eastern Central Railway GM Annexe, Bilaspur (C.G.) 495004.

---- Non-applicants

For Applicant:	Mr. Suresh Pandey, Advocate.
For Non-applicants:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/09/2017

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.
2. The applicant has filed this application stating inter alia that the purchase order issued in favour of the applicant has been cancelled and further order dated 8-12-2016 has been passed whereby the non-applicant SECR has declined to appoint arbitrator for adjudication of dispute arising out of the purchase order which has been cancelled.
3. Learned counsel for the applicant submits that it is a fit case where arbitrator can be appointed as arbitral dispute has arisen between the parties on account of cancellation of purchase order issued in

favour of the petitioner, by order dated 21-6-2016.

4. Learned counsel for the non-applicants submits that officer of Railways has to be appointed as arbitrator otherwise, the arbitration clause would be deemed to have worked its force. Section 12 of the Arbitration and Conciliation Act, 1996 suffered amendment and sub-section (5) has been inserted with effect from 12-10-2015. Section 12 (5) of the Act reads as follows: -

“12. Grounds for challenge.-

(1) to (4)

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

Provided further that this sub-section shall not apply to cases where an arbitrator has already been appointed on or before the commencement of the Arbitration and Conciliation (Amendment) Ordinance, 2015.”

5. A focused glance of the aforesaid provision would show that any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. In the instant case, the arbitrator named is a gazetted railway officer, therefore, by virtue of the provision contained in Section 12 (5) of the Act, he cannot be appointed as arbitrator.

6. No other objection has been raised.
7. Therefore, in exercise of power conferred under Section 11 (6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice L.C. Bhadoo, former Judge of this Court, as an Arbitrator to resolve the dispute between the parties in accordance with the provisions of the Act of 1996. Registry is directed to communicate this order to Hon'ble Mr. Justice L.C. Bhadoo to enter upon reference after complying with the provisions contained in Section 12 (1) and (2) of the Act of 1996 and adjudicate the dispute expeditiously in accordance with the Act of 1996.
8. The arbitration application is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge