

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 40 of 2017**

M/s. Todarmull Infrastructure Pvt. Ltd., through its Authorized Signatory Shri Suresh Suntwal, age 46 years, S/o Late Shri Balchand Sharma, 18/254, Bharat Cottage, Shankar Nagar, Raipur (C.G.) - 492 007

---- Applicant**Versus**

South East Central Railways, Through its General Manager, Office of General Manager, Bilaspur (C.G.)

---- Respondent

For Applicant : Mr. Abhishek Vinod Deshmukh, Advocate.

For Respondent : Mr. Abhishek Sinha & Ms. S. Harshita,
Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/08/2017**

(1) The respondent – South East Central Railways invited bids for construction of foundation, sub-structure and superstructure works for major bridge No.332 of span 3 x 18.3 m at Chainage 27756 with composite superstructure (Steel + RCC), Bridge No.340 (2 X 6.00 RCC Box) at Chainage 16501 and Bridge No.336 (6 X 6.00 RCC multiple Box) at Chainage 21808 and other associated allied works between Murhipar – Rajnandgaon Stations in connection with construction of 3rd line between Durg – Rajnandgaon Stations of SEC Railway, and in which applicant submitted his bid, which was accepted and the acceptance letter was issued to the petitioner on 20.12.2011 and the agreement was executed between the parties for execution of work on 16.05.2012 but the contract was terminated on 29.07.2015, despite the

delay being attributable to the respondent, as such, the applicant invoked arbitration clause by letter dated 09.09.2016. The respondent by letter dated 6.12.2016 requested the petitioner to waive off the applicability of sub-Section 12(5) of the Arbitration & Conciliation (Amendment) Act, 2015 (henceforth "Act, 2015"), which the applicant did not agree and invoke his unwillingness by letter dated 21.02.2017, as such, the arbitrator was not appointed leading to filing of this application before this Court on 14.06.2017.

(2) The respondents herein filed their reply stating inter alia that the applicant was given an option to waive off the applicability of section 12(5) of the Act, 2015 as per clause 64(1)(ii)(b) of the GCC vide letter dated 06.12.2016 to which the applicant did not agree, as such the petitioner has no case for appointment of the Arbitrator and, therefore, the application is liable to be rejected.

(3) Learned counsel for the applicant would submit that this Court is appropriate Court for appointment of an arbitrator and the notice having been given on 9.9.2016 for appointment of an arbitrator but the respondent -SECR did not appoint arbitrator and sought to waive off the applicability of section 12 (5) of the Act, 2015, as such, it is a fit case where application for appointment of arbitration can be allowed.

(4) On the other hand, counsel for the respondent opposes the application.

(5) It is not in dispute that there is arbitration clause exists between the parties for redressal of the arbitral dispute which the applicant claimed by memo dated 9.9.2016, which the respondent insisted to waive of the applicability of sub-section 12(5) of Act, 2015. Since no

arbitration was appointed till the application moved an application under Section 11(6) of the Act, 1996, therefore, petitioner has a right to seek appointment of arbitrator, which he has enforced by moving the present application.

(6) Since the arbitral dispute arisen between the parties and the necessary pre-requisite has been fulfilled to appoint the arbitrator, therefore, in exercise of my power under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with para 3(2) of the Scheme for Appointment of Arbitrators by the Chief Justice, Chhattisgarh High Court, 2002, I hereby appoint, as per claim in the memo dated 9.9. 2016, Hon'ble Mr. Justice V.K. Agarwal, Former Judge of High Court of Madhya Pradesh, B-12, Akriti Garden, Nehru Nagar, Bhopal -462 003 to adjudicate the disputes that have arisen between the parties after complying the provisions of Section 12(5) of Act, 2015.

(7) The Registry is directed to communicate this order to the learned sole arbitrator- Hon'ble Mr. Justice V.K. Agarwal, Former Judge, High Court of Madhya Pradesh forthwith to enable him to enter upon the reference and decide the matter as expeditiously as possible. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

