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HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 72 of 2017**

Shivangi Oils Pvt. Ltd., Represented through Dilip Tahmane, Aged 68 years, S/o Late Shri Prabhakar Tamhane, General Manager, Plot No.18, 19 & 32, 33, Sector B, Industrial Area, Sirgitti, Bilaspur (C.G.)

---- Applicant**Versus**

The New India Assurance Company Limited, Through Divisional Manager, Divisional Office, 2nd Floor, Rama Trade Center, Opp. Rajiv Plaza, Near Old Bus Stand Road, Bilaspur, District Bilaspur, Chhattisgarh -495001

---- Respondent

For Applicant :	Mr. Mukesh Sharma, Advocate.
For Respondent :	Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/12/2017**

(1) Invoking Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), the applicant herein has filed this application for appointment of arbitrator.

(2) Learned counsel appearing for the applicant would submit that dispute has arisen between the parties pursuant to the Insurance Policy, which has been issued by the respondent – New India Assurance Company Limited in favour of the applicant. He submits that Clause 13 of Insurance Policy provides arbitration clause for appointment of arbitration to resolve the dispute arose between the parties in accordance with the provisions of Arbitration and Conciliation

Act, 1996 and notice to this effect has been sent to the respondent-Insurance Company but despite service of notice, the arbitrator was not appointed leading to filing of this application for appointment of arbitrator.

(3) Learned counsel for the respondent would submit that he has no objection in referring the matter to the Arbitrator for resolving the dispute but the respondent- Insurance Comapny may also be given opportunity to submit his counter claim.

(4) I have heard learned counsel appearing for the parties and also gone through the record with utmost circumspection.

(5) At this stage, it would be appropriate to notice Section 11(6A) of the Act of 1996 which has been incorporated in the Arbitration and Conciliation Act, 1996 by the Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23-10-2015. Sub-section (6A) of Section 11 of the Act of 1996 reads as follows: -

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

(6) Amended sub-section (6A) of Section 11 of the Act of 1996 came up for consideration before the Supreme Court in **M/s. Duro Felguera, S.A Vs. M/s. Gangavaram Port Limited**¹ in which Kurian Joseph, J, while concurring with the conclusions recorded by R. Banumathi, J, formulated a question as to “what is the effect of the change introduced by the Arbitration and Conciliation (Amendment)

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Act, 2015 with particular reference to Section 11(6) and the newly added Section 11(6A) of the Arbitration and Conciliation Act, 1996” and answered the question in paragraph 51 and finally answered in paragraphs 62 and 63 as under: -

“51. From a reading of [Section 11\(6A\)](#), the intention of the legislature is crystal clear i.e. the Court should and need only look into one aspect-the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple – it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

62. The scope of the power under [Section 11 \(6\)](#) of the 1996 Act was considerably wide in view of the decisions in SBP and Co., (2005) 8 SCC 618, and Boghara Polyfab, (2009) 1 SCC 267. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11 \(6A\)](#) ought to be respected.

63. In the case at hand, there are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals - two for international commercial arbitration involving the Spanish Company-M/s Duro Felguera, S.A. and four for the

domestic.”

(7) Following the principle of law laid down by Their Lordships of the Supreme Court in **M/s. Duro Felguera, S.A.** (supra), while considering the application for appointment of arbitrator by virtue of amended provision i.e. Section 11(6A) of the Act of 1996, only the existence of arbitration agreement has to be seen by this Court. In the present case also, clause 13 of the Agreement clearly provides for Arbitration under the provisions of Act of 1996, therefore, arbitral tribunal for resolving the dispute pertaining to the agreement has to be constituted by granting the present application.

(9) As a fallout and consequence of aforesaid discussion, in exercise of power under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice C.B. Bajpai, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice C.B. Bajpai who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996.

(10) The arbitration application is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

