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HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No. 28 of 2015

- M/s. Aditendra Shukla, Son of Ramashankar Shukla, aged about 45 years, though its proprietor Aditendra Shukla, Address Shukla Bhawan, Sharda Chowk, Civil & Revenue District Raipur Chhattisgarh

---- Applicant

Versus

- Chhattisgarh Tourism Board, through Managing Director, Paryatan Bhawan, Indira Gandhi Road, Telibandha, Civil & Revenue District Raipur Chhattisgarh

---- Respondent

For Applicant	: Shri Anjeenesh Shukla, Advocate
For Respondents	: Shri Abhishek Sinha, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

16.01.2017

1. This application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') has been filed by the applicant for appointment of Arbitrator.
2. It is not disputed that the petitioner was awarded contract for construction of Motel in Village Rajim. It is also not disputed that the petitioner did the work. The petitioner made a claim for Rs.33 lacs. For escalated claim he was given only Rs.9 lacs odd and rest of the claim was rejected. Thereafter, the petitioner has filed this application for referring the dispute to Arbitrator. Relevant portion of Clause 29 of the agreement, which is an Arbitration Clause, reads as follows :

“Clause – 29 :- Upon receipt of written instructions or decisions the parties shall promptly proceed without delay to comply such instructions or decision, if the Managing Director Chhattisgarh Tourism Board fails to give his instructions or decision in writing within a period of 60 days or mutually agreed time after being requested if the parties are aggrieved against the decision of the Managing Director Chhattisgarh Tourism Boards the parties may within 90 days by an Arbitration Board to be constituted by the State Government which shall consist of three members of whom one shall be chosen from among the officer belonging to the Department now below the rank of S.E. one Retired Chief Engineer of any Technical Department, and one serving officer not below the rank of S.E. belonging to another Technical Department.”

3. On behalf of the respondent, it is submitted that since the request for appointment of the Arbitrator has not been made within 90 days of the claim having been rejected, as per the agreement, the claim is deemed to have been waived and furthermore since no demand has been made to the State Government for appointment of Arbitrator in terms of the Arbitration Clause, the petitioner cannot invoke jurisdiction of this Court under Section 11(6) of the Act.
4. At the outset, it may be noticed that sub Clause (e) of Clause 29 of the Agreement which says that the claim of the contract shall be deemed to have waived and absolutely barred, if the same is not filed within 90 days on receiving intimation from the Executive Engineer, cannot be held to be legal and binding because it is totally against the provisions of the Limitation Act. This clause does not limit the period for making reference, but limits the period of making claim itself. As far as making reference to the State Government is

concerned, now the Arbitration and Conciliation Act, 1996 has been amended and as per amended provision of Section 12, no employee of the organization or any person having interest in the proceedings can be appointed as Arbitrator.

5. This Court normally desists from declining to appoint Arbitrator only on technical grounds. The Arbitrator can decide all the disputes raised including the question whether the dispute is time barred. The Arbitrator can also decide whether the dispute falls within the ambit of Arbitration Clause or not. The Arbitrator can also decide whether the claimant is entitled for any amount. These are the questions to be decided by the Arbitrator and not by this Court under Section 11(6) of the Act.
6. Therefore, I hereby appoint Shri Justice Dharendra Mishra, residing at "Shyam Sadan" Tilak Nagar, Bilaspur, a retired Judge of High Court of Chhattisgarh, as Arbitrator in the case.
7. The Petitioner and the Respondents may file their claim / counter-claim before the aforesaid Arbitrator within a period of four weeks from today who is requested to dispose of the matter within the time prescribed in the Arbitration and Conciliation Act, 1996, as amended. It is however made clear that this Court has not expressed any opinion on the merits of the case and it is for the Arbitrator to decide all the disputes raised by the parties.
8. The parties are directed to appear before the Arbitrator on 19th March, 2017.

9. Registry is directed to send a copy of this order to Shri Justice Dhirendra Mishra so as to reach within one week from today.
10. The Arbitration Application stands disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE