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HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No.03 of 2017**

Jis Knowledge Park Limited A Company Incorporated Under The Provisions Of Indian Companies Act, 1956, Having Its Registered Office At Dwarika Building, 7th Sarat Bose Road, Kolkata, Represented Through Mr. Gour Gopal Bhattacharjee, Project Advisor, Aged About 75 Years, S/o Late Jatindra Mohan Bhattacharjee, Resident Of 54-B Debendra Ghosh Road, Bhawanipur, Kolkata

---- Petitioner

Versus

1. Naya Raipur Development Authority Through Its Chief Executive Officer, Having Its Registered Office At First Floor, Utility Block, Capital Complex, Sector 19, Naya Raipur, District Raipur, Chhattisgarh.
2. Chief Executive Officer, Having Its Registered Office At First Floor, Utility Block, Capital Complex, Sector 19, Naya Raipur, District Raipur, Chhattisgarh.

--- Respondents

For Appellant : Mr. Chandresh Shrivastava, Advocate
 For Respondents : Mr. Kishore Bhaduri, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

08/09/2017

Heard.

(1) This is an application filed by the appellant under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (henceforth 'Act, 1996') for appointment of Arbitrator for settlement of the disputes arisen between the parties.

(2) Mr. Chandresh Shrivastava, learned counsel appearing for the appellant would submit that pursuant to the agreement dated 29.08.2012

for Project Development and Implementation Agreement for Development of Knowledge Park in Naya Raipur, the contract in question has been terminated and the contract does contain arbitration clause for appointment of an Arbitrator. The appellant has made an application to the respondents to appoint an arbitrator in accordance with clause 23.2 of the Agreement, but the respondents have not appointed any Arbitrator though he has reiterated his request on 21.11.2016 and since, even after the lapse of more than 30 days, the respondents have not appointed any Arbitrator and therefore, the instant application has been filed for appointment of an Arbitrator.

(3) Per contra, Mr. Kishore Bhaduri, learned counsel appearing for the respondents would submit that as per clause 23.1(a) & (b) & 23.2 of the Agreement where, for an amicable resolution of the dispute an Arbitrator was provided, the petitioner has not adhered to the clause of the Agreement and directly approached this Court for appointment of Arbitrator and as such, the application is not maintainable as the dispute is pending before the Secretary, Urban Administration and Development Department, as provided under Clause 23.1(a) of the Agreement, therefore, the application is liable to be rejected.

(4) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(5) The issue that arises for consideration is, whether the existence of provision for amicable settlement will bar the appellant to make an application for appointment of the arbitrator. The appellant

issued a notice for resorting to clause 23.1 of the Agreement for amicable settlement of the dispute, but nothing was done on behalf of the respondents. Thereafter, on 14.09.2016, the appellant has again issued a notice appointing an Arbitrator for resolution of the dispute in accordance with clause 23.2 of the Contract.

(6) Section 77 of the Arbitration and Conciliation Act provides that, in spite of the conciliation proceedings going on and the existence of the same will not prevent any of the parties to exercise their right in accordance with law.

(7) Section 77 of the Arbitration and Conciliation Act, 1996 provides as under:-

“77. Resort to arbitral or judicial proceedings.- The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.”

(8) Thus, the existence of provision for amicable settlement will not bar the parties to invoke the arbitration clause as the appellant cannot be expected to wait for indefinite period of time for appointment of arbitrator and Section 77 of the Act of 1996 will apply in the instant case.

(9) Thus, the respondents' objection has been answered hereinabove and there is no other objection raised on behalf of the

respondents for appointment of an 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 Hon'ble Mr. Justice Dhirendra Mishra, Former Judge, High Court of Chhattisgarh as the sole Arbitrator to adjudicate the disputes that have arisen between the parties, in accordance with the provisions of the Act of 1996.

(10) The Registry is directed to communicate this order to the learned sole Arbitrator Hon'ble Mr. Justice Dhirendra Mishra, Former Judge, High Court of Chhattisgarh, forthwith to enable him to enter upon the reference and decide the matter as expeditiously as possible.

(11) With the aforesaid observation, the application is disposed of. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-