

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 39 of 2017**

M/s. Todarmull Balchand Suntwal, Through its Authorised Signatory Shri Suresh Suntwal, age 46 years, S/o Late Shri Balchand Sharma, 18/254, Bharat Cottage, Shankar Nagar, Raipur (C.G.) - 492007

---- Applicant**Versus**

South East Central Railways, Through its General Manager, Office of General Manager, Bilaspur (C.G.) -495 004

---- 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****01/09/2017**

(1) This is an application for appointment of arbitratory under Section 11(6) of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996").

(2) The respondent – South East Central Railways invited bids for construction of limited height subway near level crossing no. GEF-38, GCF-59, GCF-62, GCF-65 and GCF-77 with open cut method, between Gondia-Chandafort section of Nagpur division along with miscellaneous associated works and in which applicant submitted his bid, which was accepted and the acceptance letter was issued to the petitioner on 08.04.2011 and the agreement was executed between the parties for execution of work on 24.11.2011 but ultimately the respondent unlawfully and wrongfully terminated the contract on 13.02.2015, the applicant signed the final bill under protest in the

month of November, 2015 and ultimately protest was withdrawn by letter dated 01.03.2016 and, thereafter, the applicant invoked arbitration clause by letter dated 09.08.2016. 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 29.05.2017.

(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 9.8.2016 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 would submit that the work in question, which was awarded to the petitioner was of Gondia-Chandafort section of Nagpur Division and the instant work arising out of the said agreement pertains to the Nagpur Division of this railway, therefore, the application for appointment of arbitrator is not maintainable. He further submits that the petitioner has initially signed the final bill under protest and, thereafter, the protest has been withdrawn on 1.3.2016 and, therefore, the application for appointment of arbitrator is liable to be rejected.

(5) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(6) It is not in dispute the instant work in question was awarded to the applicant in Gondia-Chandafort section of Nagpur Division; the agreement was executed between the parties on 24.11.2011 at South Eastern Central Railway, Bilaspur and as per clause 64.(1)(iii) (d) of the Indian Railways Standard General Conditions of Contract, the place of arbitration would be within the geographical limits of the Division of Railway i.e. Bilaspur Division where the cause of action arose or the Headquarter of the concerned Railway i.e. Bilaspur Division in the instant case, therefore, I have no doubt about the fact that this High Court is the appropriate High Court for appointment of Arbitrator.

(7) Coming to the next objection that though initially the petitioner has signed the no claim certificate qua measurement under protest but later on by letter dated 01.03.2016 the said protest has been withdrawn stating that due to technical problem to pass the final bill we hereby withdrawn 'under protest' signed by us and, thereafter only the final bill was cleared on 9.3.2016, therefore, it cannot be held that applicant has no right to seek appointment of arbitrator, and thus, it is held that the applicant has a right to seek appointment of arbitrator, which he has enforced by moving the present application.

(8) 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 9.8.2016, 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.

(9) 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/-