

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No.06 of 2014**

Gilcon Project Service Limited, J.V. Scares Associates, Thacker Tower Plot No.86, Sector-17, Vashi, Navi Mumbai (Maharashtra).

---- Appellant

Versus

1. Chief Executive Officer, Chhattisgarh Rural Road Development Agency, Vikasbhawan, Civil Lines, Raipur (CG).
2. Secretary, Department of Panchayat & Rural Development, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (CG).

--- Respondents

For Appellant : Mr. Ankit Pandey, Advocate
For Respondents : Mr. B.D. Guru, Advocate

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

18/07/2017

Heard.

(1) This application filed by the appellant under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') read with paragraph 2 and 3(2) of the Scheme for appointment of Sole Arbitrator for settlement of the disputes arose between the parties.

(2) The brief facts of the case are as under:-

(2.1) That the petitioner as a Joint Venture has entered into agreement on 23.10.2007 with respondents, being agreement

No.24/RC-4/CGRRDA, for providing the consultancy services for construction, supervision and quality control for construction of roads under Pradhan Mantri Gram Sadak Yojna and the work order has been issued on 16.11.2007 to proceed ahead with the supervision and quality control of work under Pradhan Mantri Gram Sadak Yojana in Districts - Bastar, Dantewada, Dhamtari and Kanker. On 16.12.2011, the respondents issued completion certificate in favour of the petitioner, wherein it has been specifically stated that the petitioner had satisfactorily completed the consultancy services on 30.06.2011. Thereafter, all of a sudden on 01.08.2013, the respondents have issued a demand notice for recovery of excess amount of Rs.86.82 lakhs from the petitioner, after lapse of two and half year of the completion of contract and in payment of the said bill, dispute arose between the parties. Ultimately, as per Clause 10.3 of the Agreement and under the Act of 1996, the matter was referred to the Adjudicator and, in turn, the Adjudicator has decided and gave his decision on 07.12.2013 and the demand notice of the respondents was held to be proper.

(3) Feeling aggrieved with the decision of the Adjudicator, the petitioner by its order dated 20.12.2013 served notice on 23.12.2013 before the Secretary, Department of Panchayat and Rural Development, Government of Chhattishgarh, Raipur for appointment of Sole Arbitrator as per clause 10.5 read with 10.4 of the Agreement for adjudicating the dispute and differences that have arisen between the parties, but the Arbitrator was not appointed within a period of 30 days from the date of receipt of notice. Against that, the petitioner filed

an application under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 before this Court on 27.01.2014 for which notices were issued to the respondents No.1 & 2 and in turn, respondents No.1 & 2 have filed their separate return/reply to the application under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996.

(4) Respondent No.1-Chief Executive Officer, Chhattisgarh Rural Road Development, Raipur has stated that the application filed by the petitioner for appointment of the Sole Arbitrator is not maintainable as the same has been filed after expiry of the period of 30 days and as such the same is time barred. It has further been pleaded that as per clause 10.4 of the Agreement and under the Act of 1996, the application for appointment of the Sole Arbitrator was to be filed on 06.01.2014 against the decision of the Adjudicator dated 07.12.2013, but the instant application has been filed beyond the prescribed period on 25.01.2014 and, therefore, the application is liable to be dismissed.

(5) Mr. Ankit Pandey, learned counsel appearing for the petitioner would submit that the Adjudicator gave his decision on 07.12.2013, which was received by the petitioner on 13.12.2013 and notice was served to the Secretary, Department of Panchayat & Rural Development, Government of Chhattisgarh, Raipur for appointment of the Sole Arbitrator as per clause 10.5 read with clause 10.4 of the Agreement dated 23.10.2007. When the Sole Arbitrator was not appointed within a period of 30 days from the date of receipt of notice,

the application for appointment of Sole Arbitrator has been filed by the petitioner before this Court on 27.01.2014 which is in accordance with law and this Court is an appropriate Court to deal with the application and settle the dispute arose between the parties, by allowing the application.

(6) Per contra, Mr. B.D. Guru, learned counsel appearing for the respondent No.1 would submit that the application filed by the petitioner for appointment of the Sole Arbitrator is barred by limitation as it has been filed after a period of 30 days from the decision of the Adjudicator dated 07.12.2013, therefore, the same is liable to be rejected.

(7) I have heard learned counsel for the parties, their rival submission made therein and perused the material available on record with utmost circumspection.

(8) Clause 10.3 and 10.4 of the Agreement provides as under:-

“10.3 If any dispute or difference of any kind whatsoever shall arise in connection with or out of this Contract and which is not amicably settled between Consultant and the Agency as per provisions of Clause 10.2 of the agreement the same shall be referred for settlement to the Adjudicator in the person of the Secretary (or the Head) of the Nodal Department of the State Government within 14 days of arising of such disputes. The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of dispute. Performance under the Contract shall continue notwithstanding the reference to the Adjudicator.

10.4. Any Party not satisfied with the decision of the Adjudicator shall be free to refer the case for arbitration under the provision of the Arbitration and Conciliation Act 1996 within 30 days. If neither Party prefers the dispute to Arbitration within the above 30 days, the Adjudicator's decision will be final and binding."

(9) A careful perusal of clause 10.3 & 10.4 of the Agreement would show that the Adjudicator is required to give his decision within 28 days of the receipt of a notification of dispute and any of the parties not satisfied with the decision of the Adjudicator shall refer the case for arbitration under the Act of 1996 within a period of 30 days from the the decision of the Adjudicator. Once the Adjudicator has given his decision, the aggrieved party is entitled to file an application after following the mandate contained in the Act of 1996 giving 30 days notice to the other side. In the present case, the Adjudicator gave his decision on 07.12.2013, which was received by the petitioner on 13.12.2013 and the notice as required was served to the respondent on 23.12.2013. The application filed for appointment of Sole Arbitrator before this Court on 27.01.2014, which is strictly in accordance with law and it cannot held to be barred by limitation. Clause 10.4 of the Agreement referred to 30 days for arbitration under the provisions of the Act of 1996, but that is not the period of limitation prescribed for filing an application under the Act of 1996. Therefore, the contention of the respondents that the application was barred by limitation is rejected. Since the Chhattisgarh High Court is an appropriate High Court for appointment of Arbitrator under Sections 11(5) & 11(6) of the Arbitration and Conciliation Act, 1996 for settlement of dispute which

has arisen between the parties but is an appropriate Court to grant an application under Section 11(5) of the Act of 1996 in exercise of powers conferred by herein appointment and in exercise of my powers conferred under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice Dhirendra Mishra, Former Judge, High Court of Chhattisgarh as a Sole Arbitrator to adjudicate the arbitral dispute between the parties in accordance with the Act of 1996.

(10) Registry is directed to communicate this order to Hon'ble Mr. Justice Dhirendra Mishra to enter into reference after complying the provision contained in Section 12 of the Act of 1996 to adjudicate the arbitral dispute expeditiously.

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

Sd/-

(Sanjay K. Agrawal)
Judge

L/-