

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No.73 of 2016

M/s Prem Prakash, through its Partner Prem Prakash Wasan, S/o Late Jagdish Lal Wasan, Aged about 76 years, Wasan Chawl, Korba, Tahsil & District Korba (C.G.)

---- Applicant

Versus

General Manager, M/s Bharat Aluminium Company Limited, Balconagar, Tahsil & District Korba (C.G.)

---- Non-applicant

For Applicant:	Mr. Anand Mohan Tiwari, Advocate.
For Non-applicant:	Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/09/2017

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') for appointment of arbitrator.
2. Mr. Anand Mohan Tiwari, learned counsel for the applicant, submits that general conditions of contract was part of the agreement entered into between the parties and the application for appointment of arbitrator was rejected by the Additional District Judge, Korba on 2-4-2002 against which Civil Revision No.432/2002 was preferred, that has been dismissed by this Court on 28-9-2016 holding that the Act of 1996 would apply and granted liberty to the applicant to file application under Section 11(6) of the Act of 1996. He further submits that in accordance

with the liberty given, this application under Section 11(6) of the Act of 1996 has been filed in which this Court has allowed the application under Section 14 of the Limitation Act, 1963 and condoned the delay in filing the application by order dated 20-1-2017. This High Court is the appropriate High Court for appointing arbitrator.

3. Mr. Sachin Singh Rajput, learned counsel for the non-applicant, relying upon the agreement submits that all disputes arising out of or in any way connected with the agreement shall be deemed to have arisen in Sambalpur and only the Courts in Sambalpur shall have jurisdiction to determine the same and since there is exclusive jurisdiction clause, the application as framed and filed would not be maintainable and the Orissa High Court will have jurisdiction to hear the matter and therefore no original arbitration agreement has been filed. He further submits that the claim is barred by limitation.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.
5. So far as the first objection with regard to certified copy of the arbitration agreement is concerned, the applicant has filed the generation conditions of contract which contains the arbitration clause in shape of clause 9.2.1 – Demand for Arbitration. Certified copy of the general conditions of contract has been

filed, as the original is said to have been in the possession of the non-applicant. Therefore, this objection is overruled.

6. Now, coming to the next objection by Mr. Rajput that the claim which is sought to be adjudicated, is barred by limitation and therefore it cannot be referred to arbitrator, it is well settled law that so far as the claim to be barred by limitation is concerned, it is a matter which has to be considered by the arbitral tribunal. (See **SBP & Co. v. Patel Engg. Ltd.**¹ and **National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.**² followed in **Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra and another**³.)
7. Coming to the last objection of Mr. Rajput that since the agreement contains a clause which is an exclusive jurisdiction and by which the Courts of Sambalpur only have jurisdiction, therefore, this Court has no jurisdiction to determine the same.
8. The general conditions of the contract is a part of the agreement. Clause 9.2.1 of the general conditions of the contract states as under: -

“9.2.1 DEMAND FOR ARBITRATION

If the Contractor be dissatisfied with the decisions of the company, on any matters in question dispute or difference on any account or as to the withholding by the company of any certificates to which the Contractor may claim to be entitled to or if the Company fails to make decisions within a reasonable time, then the Contractor within ten days of the receipt of the communication of such decision, or after the expiry of reasonable time, (which

1 (2005) 8 SCC 618

2 (2009) 1 SCC 267

3 (2012) 2 SCC 144

reasonable time will in no case exceed three months) as the case may be deemed in writing that such matters in question, dispute or difference, be referred to arbitration. Such demand for arbitration shall be delivered to the Company by the Contractor and shall specify the matters which are in question, dispute or difference and such dispute or difference of which the demand has been made and no other matter shall be referred to arbitration.”

9. Further, it will also be appropriate to notice the clause relating to jurisdiction at Sambalpur which states as under: -

“All disputes arising out of or in any way connected with agreement shall be deemed to have arisen in Sambalpur and only the Courts in Sambalpur shall have jurisdiction to determine the same.”

10. Arbitration clause is a part of the agreement which nowhere provides that the seat of arbitration shall be at Sambalpur. It only prescribes the seat other than the arbitration dispute for resolving the dispute at District Court, Sambalpur, as admittedly Sambalpur does not have the seat of High Court and application under Section 11(6) of the Act of 1996 has to be filed before the Chief Justice or his designate.

11. The decisions of the Supreme Court cited by Mr. Rajput namely **Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited**⁴ and **Swastik Gases Private Limited v. Indian Oil Corporation Limited**⁵, therefore, would have no application where the seat of arbitration was already fixed at Mumbai.

12. In view of the above, all the objections raised to the application

4 2017 SCC OnLine SC 442

5 (2013) 9 SCC 32

are hereby rejected. In exercise of power under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice G. Minhajuddin, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice G. Minhajuddin who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996.

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

Sd/-
(Sanjay K. Agrawal)
Judge