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HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No.82 of 2016

M/s. Rally Tech Services Private Limited, Through its Managing Director & Power of Attorney Holder R.S.C. Murthy, Plot No.85/17, D-Block, Autonagar, Visakhapatnam, Andhra Pradesh

---- Applicant

Versus

M/s. Vandana Global Limited, Vandana Bhavan, 1st Floor. M.G. Road, Raipur, District Raipur, Chhattisgarh

---- Non-applicant

For Applicant:	Mr. B. Gopa Kumar, Advocate.
For Non-applicant:	Mr. Prafull N. Bharat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/05/2017

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996. for appointment of arbitrator for adjudication of arbitral dispute arisen between the parties.
2. The applicant is a Private Limited Company and it is engaged in the business of providing EPC services in Mechanical, Electrical, Civil, Structural and Instrumentation projects for industries like Steel Plants, Power Plants, Calcining units, Cement Plants and other sectors like Oil, Railways, Electricity Boards, Commercial Complexes etc.. The non-applicant is also a Private Limited Company incorporated under the provisions of the Companies Act, 1956.

3. The applicant and the non-applicant entered into an agreement dated 11-3-2013 under certain terms and conditions whereby the applicant had undertaken the job of supply of Lower Electrode and Upper Electrode from the non-applicant valued at ₹ 9,16,85,760/- inclusive of central excise duty and CST and the said material, according to the applicant, was duly delivered at the non-applicant plant at Siltara in Raipur as per the purchase order dated 11-3-2013, but the applicant has only received ₹ 8,40,85,759/- contrary to the terms in the purchase order and hence, an amount of ₹ 76,00,000/- is outstanding for payment by the non-applicant which the non-applicant has deliberately withheld without assigning reason. It is further case of the applicant that he has served legal notice dated 26-8-2015 to the non-applicant for clearance of the remaining amount which the non-applicant has replied refuting the allegation and a counter allegation was made against the applicant, but the applicant reiterated the same on 5-10-2015. Finally, the applicant served a legal notice to the non-applicant invoking arbitration clause as mentioned in the purchase order dated 11-3-2013 for appointment of arbitrator. It is also the case of the applicant that since the non-applicant has not appointed arbitrator for settlement of dispute, he filed application under Section 11(6) of the Arbitration and Conciliation Act, 1996 before this Court.
4. Reply has been filed refuting the allegation stating inter alia that the applicant has not complied with the terms and conditions of

the purchase order and the applicant has not demonstrated what is the dispute between the parties and whether the applicant had made any attempt to resolve the difference through amicable manner. Therefore, according to Section 11 (6) of the Arbitration and Conciliation Act, 1996 the application would not be maintainable.

5. Mr. B. Gopa Kumar, learned counsel appearing for the applicant, would submit that the non-applicant Company has not made payment of Rs.76 lakhs as per the purchase order dated 11-3-2013, though attempt was made to resolve the dispute and notices were also sent, but finding no solution and non-receipt of amount, notice dated 7-5-2016 was served for appointment of arbitrator, however, within 30 days, neither arbitrator was appointed nor payment was made leading to filing of this application. This High Court is the appropriate High Court and there is live dispute between the parties, therefore, the matter be referred to the arbitrator and an arbitrator may be appointed for resolution of dispute between the parties.
6. On the other hand, Mr. Prafull N. Bharat, learned counsel appearing for the non-applicant, would submit that before invoking the arbitration clause, the applicant was required to try to revolve the differences and disputes pertaining to the purchase order in an amicable manner which he has demonstrably failed to do, therefore, the application would not be maintainable and is liable to be rejected on this sole ground only.

The notice issued for appointment of arbitrator dated 7-5-2016 is contrary to the terms of the purchase order. He would further submit that the place of arbitration would only be at Raipur and therefore, the arbitrator of Hyderabad cannot be appointed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above.
8. It is not in dispute that this High Court is the appropriate High Court to appoint arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996. It is also not in dispute that there is live dispute with regard to payment of ₹ 76 lakhs existing between the parties. The first and final objection that has been taken by the other side Mr. Prafull N. Bharat, learned counsel appearing for the non-applicant, is that unless the dispute is firstly tried to be resolved in amicable manner, arbitration clause cannot be invoked.
9. According to learned counsel for the applicant, the applicant having failed to resolve the difference of opinion amicably by taking-up the matter with the non-applicant orally, has invoked the arbitration clause. He further submits that service of notice would itself indicate that the dispute has arisen and amicable settlement has failed and it could not have been resolved amicably necessitating the issuance of notice to the other side claiming the amount in dispute and therefore, such an objection is untenable.

10. Admittedly, the purchase agreement was entered into on 11-3-2013, ₹ 8,40,85,759/- i.e. last payment has been made on 11-8-2014 and first legal notice was issued on 26-8-2015. There is period of one year and according to the applicant, when the non-applicant refused to make payment blatantly then there is need to issue notice for payment. Even otherwise, the applicant finding that their request for payment has not been accepted, invoked the arbitration clause for appointment of arbitrator after issuing notice and legal notice. Not only this, Section 30 of the Arbitration and Conciliation Act, 1996 also empowers the arbitral tribunal that it may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement and if the matter is settled, the arbitral tribunal is entitled to terminate the proceedings, in view of this, I am of the opinion that the objection raised by the non-applicant that the application for arbitration is not maintainable, deserves to be rejected. Since I have already held and this High Court is the proper High Court and there is live arbitral dispute existing between the parties, I deem it appropriate to exercise my discretion under Section 11 (6) of the Arbitration and Conciliation Act, 196 and hereby appoint Shri P.K. Dave, retired District Judge, to arbitrate the dispute existing between the parties in respect of payment and all disputes pertaining to and arising out of the agreement dated 11-3-2013. The Arbitrator is free to settle his fee with the parties.

11. The application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 is allowed. No order as to costs.
12. Registry is directed to communicate the order to the learned District Judge (Retd.) who shall enter into reference and decide the dispute expeditiously.

Sd/-
(Sanjay K. Agrawal)
Judge

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