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HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No. 34 of 2007**

M/s Suresh Kumar Goyal, Engineer & Contractors, Shanti Bhawan, Fouji Gali, District Surguja (C.G.) Through : Shri Suresh Kumar Goyal, Proprietor.

---- Applicant**Versus**

1. South Eastern Coalfields Limited, Through : The General Manager (Civil), South Eastern Coalfields Limited, Seepat Road, P.O. S.E.C.L, Bilaspur (Chhattisgarh).
2. The Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.O. - S.E.C.L., Bilaspur (Chhattisgarh).
3. The General Manager, South Eastern Coalfields Limited, Bhatgaon Area, District Surguja (Chhattisgarh).

---- Respondents

For Applicant	:	Mr. Rahul Jha, Advocate.
For Non-applicants	:	Dr. N.K. Shukla, Senior Advocate with Shri Vikram Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****23/03/18**

1. The applicant has preferred this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act of 1996') for appointment of arbitrator.
2. Learned counsel for the applicant submits that the applicant and the non-applicant SECL on 24-04-1998, entered into an agreement for execution of the work of Drifting of Incline No.1 at Nawapara Project of Bhatgaon area and estimated cost was Rs.35.25 Lakhs. Thereafter, the non-applicants terminated the work of the applicant on 30-07-2003

and also imposed a penalty of Rs.3,52,515/-. The applicant made representation for referring the matter to the arbitrator as provided in Clause 14.1 of the Civil Engineering Manual of Coal India Limited which was not acted upon leading to filing of the instant application for appointment of arbitrator.

3. Reply has been filed stating inter-alia that the application is not maintainable and the applicant's remedy would be to file Civil Suit provided in Clause 15 of the Work Order dated 27-08-1997 and as such the application is not maintainable.
4. I have heard learned counsel for the parties, considered the rival submissions and gone through the record with utmost circumspection.
5. As per the provisions under the "NOTE" in the general terms and conditions of the contract, it is provided that "in case of any ambiguity, the Civil Engineering Manual shall be referred to and the provisions in the Civil Engineering Manual shall prevail upon."
6. The provisions of Civil Engineering Manual of Coal India Limited contains arbitration clause, which reads thus:

"14. Settlement of Disputes / Arbitration.

14.1 It is incumbent upon the contractor to avoid litigations and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes through committees at different

levels made for this purpose by the company.

The contractor should make request in writing to the Engineer Incharge for settlement of such disputes / claims within 30 (thirty) days of arising of the cause of disputes/claims failing which no disputes/claims of the contractor shall be entertained by the company. If differences still persist the contractor may request in writing to the Engineer Incharge for referring the matter to a sole Arbitrator. Such request shall be made by the contractor within 90 (ninety) days of receiving the intimation from the Engineer Incharge about the final decision of the above committees in regard to the disputes / claims failing which the claim, difference or disputes of the contractor will be deemed to have been waived and the company shall be released and discharged of all liabilities under this contract in respect of this claims. However, it is the prerogative of the company to accede to the request of the contractor for appointment of a sole Arbitrator.

- 14.2 Except where otherwise provided for in the contract all questions and disputes relating to meaning of the specification, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, design, drawings specification, estimates, instructions, orders or these conditions or otherwise concerning the

works or the execution or failure to execute the same whether arising during commencement/the progress of the work or after the completion or abandonment thereof shall be referred to, on failure of settlement of disputes by the company and on request of the contractor as per clause 14.1 of the contract, the sole arbitration of the person appointed by the Chairman-cum-Managing Director of the company or any other person authorized by him, to appoint such arbitrator.

There shall be no objection to any such appointment that the arbitrator so appointed is an employee of the company and that in the course of his duties as an employee of the company he had expressed views on all or any of the matters in dispute or difference.”

7. The aforesaid provision clearly contains the arbitration clause.

Argument of learned counsel for the non-applicants is based on clause 15 of work order which states as under :

“That matters relating to any disputes or differences arising out of this work order and subsequent contract agreement entered, based on this tender and work order shall be subject to the jurisdiction of District Court, Bilaspur (C.G.) only.”

8. The similar plea based on clause 15 was raised by the non-applicant/ SECL in Arbitration Application No. 2/2010 (M/s Kailash Sharma Vs. SECL & another) decided on 1-1-2013, in which this

Court repelling that contention held as under :

“As per Section 85 of the Act of 1986, the Arbitration Act, 1940 has been repealed. Even prior to the judgment of Supreme Court in the case of **SBP & Co. v. Patel Engineering Ltd. and another, (2005) 8 SCC 618**, the petitions under Section 11(6) of the Act of 1996 are being filed before the District Judge having territorial jurisdiction over the subject matter. An agreement between the parties to a contract to the effect that a suit concerning disputes arising between them on the basis of that contract should be instituted in one only, out of two competent courts having territorial jurisdiction over the subject matter of that suit is valid and enforceable and is not void under Section 28 of the Contract Act, 1872. It is in this backdrop, vide clause 14 of the work order, the parties have agreed to confer jurisdiction to the Court at Bilaspur. It does not mean that by incorporating the same in the work order, the arbitration clause stands excluded by necessary implication.”

9. The decision of the Court in **Kailash Sharma** (supra) was challenged before the Supreme Court in SLP(C) No.9108/2013. Ultimately, that petition was dismissed on 01-05-2017. Therefore, it cannot be held that incorporating the jurisdiction of Civil Court in the work order, the arbitration clause stands excluded by necessary implication.

10. Considering that the non-applicants have failed to act on the request of the applicant for appointment of arbitrator and also considering that the dispute had arisen out of contract agreement, this Court is of the opinion that a case for appointment of arbitrator is made out.
11. Considering the nature of dispute between the parties in the light of Section 11(6) read with Section 11(8) of the Act, I deem it fit to appoint a retired former Judge of High Court as sole arbitrator to adjudicate upon the dispute between the parties.
12. Therefore, I hereby appoint Hon'ble Shri Justice V.K. Shrivastava, former judge of High Court of Chhattisgarh at Bilaspur, as sole arbitrator, subject to his consent.
13. The Hon'ble Arbitrator may settle his terms and conditions and remuneration.
14. Registry of this Court to intimate Hon'ble Shri Justice V.K. Shrivastava about his appointment as Arbitrator in the instant matter to resolve the dispute arose between the parties. Necessary papers be also sent to Hon'ble Shri Justice V.K. Shrivastava along with addresses of the parties.
15. Parties to the application are also directed to approach Hon'ble Shri Justice V.K. Shrivastava, Mridu Villa, Warehouse Road. Opp. State Legal Services, Bilaspur and to submit relevant papers and also to take part in arbitration proceedings.

16. In view of the above, this application for appointment of Arbitrator stands disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

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