

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on : 6/7/2018****Order delivered on: 6/8/2018****Arbitration Request No.2 of 2018**

J.B. Construction Company through its partner Jaspal Sethi S/o Shri Late G.S. Sethi, Aged about years Office at Hotel Jay Bee Inn, Telephone Exchange Road, Police Station Taarbahar, Tehsil and District Bilaspur (CG)

----Applicant**Versus**

1. The South Eastern Central Railway through General Manager, 5th Floor, C-Block, Bilaspur, District Bilaspur (CG)
2. The Senior DEN (Central) South Eastern Central Railway, Nagpur (Maharashtra)

---- Respondents

 For Applicant : Mr.Rahul Jha and Mr.Sanjay Agrawal,
 Advocates
 For Respondents : Mr.Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The applicant and respondents herein entered into contractual agreement on 30.10.2012. In order to resolve the arbitral dispute, request was made to appoint the arbitrator. Sole arbitrator was appointed by the respondents herein as per agreement. The sole arbitrator noticed the claimant and respondents to submit their statement of claim within 30 days before it, but the claimant did not submit its statement of claim leading to termination of arbitration proceedings under Section

25(a) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "Act of 1996"). The applicant herein failed to submit its statement of claim within a reasonable time and has filed this application under Section 11(6) of the Act of 1996 for appointment of substitute arbitrator.

2. Learned counsel for the applicant would submit that since the action taken by the respondents is null and void as being an employee of Railways he lacks jurisdiction, authority and competence to act as Sole Arbitrator in view of the provisions contained in Section 12(5) of the Act of 1996 read with Seventh Schedule as amended in the year 2015, therefore, the present application for appointment of arbitrator is maintainable and arbitral dispute still exists. Therefore, independent sole arbitrator be appointed by granting the application.
3. On the other hand, learned counsel for the respondents would submit that since arbitration proceedings have already been terminated and the arbitral tribunal continues to exist, the appropriate remedy is to challenge the order under Section 25 of the Act of 1996 in an appropriate petition, as such, the present application for appointment of arbitrator would not be maintainable.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

5. In this case, admittedly the arbitrator was appointed by the respondents on 1.12.2016, in which despite reasonable opportunity having been granted, the applicant did not file its statement of claim in accordance with sub-section (1) of Section 23 of the Act of 1996, as such, the arbitral tribunal has terminated the proceeding by virtue of the provisions contained in Section 25(a) of the Act of 1996, however, the arbitral tribunal continues to exist.
6. In the matter of **M/s Anuptech Equipments Private Ltd. v. M/s Ganpati Co-op.Housing Society Ltd., Mumbai and others**¹ the issue before the High Court of Bombay was what is the remedy to the party in the event the proceedings are closed under Section 25. On a consideration of the provisions of the Act and the fact that no party can be left without a remedy. After going into, it has been held by that Court that the extraordinary remedy by way of Article 226 would be maintainable.
7. Similarly, in the matter of **Dilnawaz Kohinoory and others v. Boman Kohinoor and others**², the Bombay High Court has held that once the power under Section 11(6) has been exercised and proceedings have been closed under Section 25 of the Act of 1996, there is no further power considering the nature of power under Section 11 of the Act of 1996 unless the order closing proceeding is set aside.

¹ AIR 1999 Bombay 219

² 2002 (1) Mh.L.J. 549

8. I am in respectful agreement with the view expressed by the Bombay High Court and following the above-stated judgments (supra), it is held that second application for appointment of arbitrator is not maintainable in view of the fact that only arbitration proceeding has been terminated, the arbitral tribunal still exists and the order closing proceeding has not been set aside. However, the applicant is at liberty to question the order closing arbitration proceedings in accordance with law.
9. The arbitration request is disposed of accordingly reserving the above-stated liberty in favour of the applicant.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-