

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Request No. 5 of 2018**

Ajay Kumar Sahu, S/o Ravishankar Sahu, aged about 42 years, resident of Ward No. 5, Harrapara, Baikunthpur, District Korea, Chhattisgarh

----Applicant

Versus

1. Basant Kumar Rai, S/o Sh, Bhaiyyalal Rai, aged about 50 years, Resident of Village – Odgi Naka, Baikunthpur, P.S. & Tah. Baikunthpur, District – Korea, Chhattisgarh.

2. M/s. Sai Tractors, having its head office at Odgi Naka, Baikunthpur, District – Korea, Chhattisgarh

Through its Partner No. 1 – Basant Kumar Rai, S/o Sh, Bhaiyyalal Rai, aged about 50 years, Resident of Village – Odgi Naka, Baikunthpur, P.S. & Teh. Baikunthpur, District – Korea, Chhattisgarh

---- Respondents

For Petitioner : Mr. Manoj Paranjpe, Advocate
For Respondents : Mr. Chandresh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/07/2018

(1) Invoking Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), the applicant herein has filed this application for appointment of arbitrator.

(2) It is not in dispute that the partnership agreement was executed between the parties on 30.05.2005. As some contractual dispute has arisen between the parties, instant arbitration request has been filed for appointment of arbitrator under Section 11(6) of the Act, 1996.

(3) I have heard learned counsel appearing for the parties.

(4) At this stage, it would be appropriate to notice Section 11(6A) of the Act of 1996 which has been incorporated in the Arbitration and Conciliation Act, 1996 by the Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23-10-2015.

Sub-section (6A) of Section 11 of the Act of 1996 reads as follows: -

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

(5) Amended sub-section (6A) of Section 11 of the Act of 1996 came up for consideration before the Supreme Court in **M/s. Duro Felguera, S.A Vs. M/s. Gangavaram Port Limited**¹ in which Kurian Joseph, J, while concurring with the conclusions recorded by R. Banumathi, J, formulated a question as to “what is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 with particular reference to Section 11(6) and the newly added Section 11(6A) of the Arbitration and Conciliation Act, 1996” and answered the question in paragraph 51 and finally answered in paragraphs 62 and 63 as under: -

“51.From a reading of [Section 11\(6A\)](#), the intention of the legislature is crystal clear i.e. the Court should and need only look into one aspect-the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple – it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

1 2017 SCC OnLine SC 1233

62. The scope of the power under [Section 11 \(6\)](#) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co.*, (2005) 8 SCC 618, and *Boghara Polyfab*, (2009) 1 SCC 267. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11 \(6A\)](#) ought to be respected.

63. In the case at hand, there are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals - two for international commercial arbitration involving the Spanish Company-M/s Duro Felguera, S.A. and four for the domestic.”

(6) Now in the present case, class IX of the partnership agreement dated 30.05.2005 clearly provides arbitration under the provisions of Act of 1996, therefore, arbitral tribunal for resolving the dispute pertaining to the agreement has to be constituted by granting the present application. It is open for the parties to raise all legally permissible contentions before the Tribunal so constituted.

(7) As a fallout and consequence of aforesaid discussion, in exercise of power under [Section 11\(6\)](#) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice Gulam Minhajuddin, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice Gulam Minhajuddin who shall enter into reference after complying with the provisions contained in [Section 12 \(2\)](#) of

the Act of 1996.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

