

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Request No. 4 of 2018**

M/s Fact India Engineering Company, Through S.M. Shageer, S/o Late S.M. Akhtar, aged about 72 years, R/o New Adarsh Nagar, Borsi Road, Durg, District Durg (C.G.)

----Applicant

Versus

National Thermal Power Corporation Ltd., Through its General Manager, Pragati Nagar, Korba, District Korba (C.G.)

---- Non-applicant

For Applicant	: Ms. Sunita Jain, Advocate.
For Non-applicant	: Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/07/2018

1. In a contractual dispute arisen between the parties in accordance with the agreement executed between them on 10.07.1979, an Arbitrator Shri D.K. Shukla, the then General Manager was appointed as sole arbitrator to decide the dispute. The said Arbitrator has passed its award on 27.06.1984.

2. Being aggrieved and dissatisfied with the said award, the applicant filed an application under Section 14(2) of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996") before the District Judge, Bilaspur for appointment of substituted arbitrator in place of Shri D.K. Shukla, which was dismissed for want of prosecution vide order dated 6.12.2005 and ultimately it was restored by order dated 19.09.2017. After restoration of the matter, the District Judge, by its order dated 26.10.2017, finally held that District Judge has no jurisdiction to entertain application under Section 14(2) of the

Act, 1996, therefore, the instant arbitration request under Section 11(6) of the Act, 1996 has been filed for appointment of fresh arbitrator.

3. Learned counsel appearing for applicant would submit that since the application under Section 14(2) of the Act, 1996 has been rejected by the District Judge, therefore, this Court will have the jurisdiction to appoint arbitrator under Section 11(6) of the Act, 1996.

4. Per contra, counsel for the respondent would submit that application under Section 11(6) of the Act, 1996 is not maintainable.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. The question for consideration would be whether application under Section 11(6) of the Act, 1996 is maintainable for appointment of arbitrator after rejection of application under Section 14(2) of the Act, 1996 filed by the applicant.

7. This issue is no longer *res integra* and it stands decided by this Court in Arbitration Application No. 80 of 2016 {**Rahul Somani & others Vs. Ramgopal Somani & others**}, in which by referring the decision rendered by the Supreme Court and High Court, this Court in paragraphs 14, 15, 18 & 19 held as under:-

“14. Thus, in the case at hand, the word “**Court**” would mean the principal Civil Court of original jurisdiction i.e. the Court of District Judge of the concerned District. The application under Section 14 would, thus, lie before the District Judge of the concerned District having exercising power of principal Civil Court of original

jurisdiction and not before the High Court.

15. In reaching to the above conclusion, I draw assistance from the law laid down by the Supreme Court in the matter of **Nimet Resources INC and another Vs. Essar Steels Ltd. (2007) 8 Scale**, in which, the following has been held by the Supreme Court in paras 7 to 11:

“7. Sub-Section (2) of Section 14 of the 1996 Act reads as under:

“Section 14(2) If a controversy remains concerning any of the grounds referred to in clause (a) of Sub-Section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.”

8. Application in terms of sub-section (2) of Section 14, thus, lies before a 'Court' within the meaning of the 1996 Act.

9. It is only thus the 'Court', within the meaning of the provisions of the said Act which can entertain such an application raised by the parties herein and determine the dispute therein on merit.

10. Unlike the 1940 Act, “Court” has been defined in Section 2(1)(e) to mean;

“2(1)(e) Court means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any court of Small Causes”

11. As a “Court” has been defined in 1996 Act itself, an application under Section 14(2) would be maintainable only before

the Principal Civil Court which may include a High Court having jurisdiction but not this Court.”

18. I am not impressed with the arguments advanced by learned counsel for the applicant, because, as long as an Arbitrator is functioning under the deed of joint consent for appointment of Arbitrator and is seized of the matter, ***a second application for appointment of fresh Arbitrator is not maintainable unless the mandate of earlier appointed Arbitrator is terminated in accordance with Section 14 of the Act, 1996.***

19. I am not commenting on the jurisdiction of this Court under Section 11(6) of the Act, 1996, once the mandate is terminated, but for the presence, this Court has no jurisdiction to entertain an application for appointment of fresh Arbitrator.”

8. Now, in the instant case, it is not in dispute that mandate of arbitrator already appointed has not been terminated in accordance with Section 14 of the Act, 1996, therefore, the present arbitration request for appointment of fresh arbitrator under Section 11(6) of the Act, 1996 is not maintainable.

9. In view of the foregoing, the arbitration request is dismissed, as not maintainable. However, the application would be at liberty to proceed in accordance with law or to challenge the order dated 26.10.2017 passed by the learned District Judge in accordance with law. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

D/-