

HIGH COURT OF CHHATTISGARH, BILASPURArbitration Request No.14 of 2018

Union of India, Through Senior Divisional Electrical Engineer (TRD),
South East Central Railway, Bilaspur

---- Applicant

Versus

Chhattisgarh State Power Distribution Company Ltd., Through Managing
Director, CS Power Campus, Dangania, Raipur

---- Non-applicant

For Applicant:	Mr. H.S. Ahluwalia, Advocate.
For Non-applicant:	Mr. Varun Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2018

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 requesting for appointment of arbitrator.
2. Learned counsel for the applicant would submit that arbitral dispute had arisen between the parties for which a writ petition was filed before this Court and this Court on 22-6-2017 disposed of the writ petition with a liberty to resolve the dispute by way of arbitration. Now, application for appointment of arbitrator has been filed, as there is arbitration clause, therefore, arbitrator be appointed.
3. Learned counsel for the non-applicant would submit that the dispute is not arbitrable.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the

record with utmost circumspection.

5. In the case in hand, the applicant herein had filed W.P. No.2504/2002 (Union of India v. Chhattisgarh State Electricity Board and others) questioning the electricity bill which was disposed of by this Court holding that the dispute is arbitrable in terms of clause 30 of the agreement, with liberty to move suitable application under the Act of 1996.

6. 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.”

7. Amended sub-section (6A) of Section 11 of the Act of 1996 came up for consideration before the Supreme Court in the matter of **M/s. Duro Felguera, S.A. v. 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

1 2017 SCC OnLine SC 1233

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.

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.”

8. Following the principle of law laid down by Their Lordships of the

Supreme Court in M/s. Duro Felguera, S.A. (supra), while considering the application for appointment of arbitrator by virtue of amended provision i.e. Section 11(6A) of the Act of 1996, only the existence of arbitration agreement has to be seen by this Court. In the present case also, the general conditions of contract which is a part of the agreement contains the arbitration agreement / clause. Therefore, an arbitral tribunal for resolving the dispute pertaining to the agreement has to be constituted by granting the present application. Apart from this, the applicant has filed this application in compliance of the order passed by this Court in W.P. No.2504/2002 directing the applicant to avail the remedy under the Act of 1996 and that order passed by this Court in the said writ petition has become final.

9. 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 Dhirendra Mishra, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice Dhirendra Mishra who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996. However, the non-applicant is at liberty to raise all permissible pleas in defence before the Tribunal.
10. The arbitration request is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge