

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Application No.81 of 2017

M/s Shivam Infrastructure, a partnership firm registered under the Indian Partnerships Act, 1935, Having its office at Sharda Sadan, Behind Gayatri Mandir, Vinoba Nagar, Talapara Road, Bilaspur (C.G.) Through its Partner Shri Shailesh Agrawal, S/o Shri Madanlal Agrawal, aged about 47 years.

---- Applicant

Versus

1. South East Central Railway (SECR), through its General Manager, GM/SECR's Officer Complex, Bilaspur (C.G.)
2. Divisional Railway Manager, Bilaspur Division, South East Central Railway, Bilaspur (C.G.)
3. General Manager (Arbitration), South East Central Railway, GM Annex Building, 5th Floor, Bilaspur (C.G.)
4. Sr. Divisional Engineer (Co-ordination), Titli Chowk, Railway, Settlement, Bilaspur (C.G.)
5. Divisional Engineer (North), Office of Sr. Divisional Engineer (Co-ordination), Titli Chowk, Railway, Settlement, Bilaspur (C.G.)
6. Additional Divisional Engineer, South East Central Railway, Shahdol, District Shahdol (M.P.)

---- Non-applicants

For Applicant: Mr. Harsh Wardhan, Advocate.

For Non-applicants: Mr. Abhishek Sinha & Ms. S. Harshita, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/01/2018

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. Essential facts leading to filing of this application are as under: -

2.1) The applicant had entered into an agreement on 31-10-2013 for execution of construction work of RUB in lieu of closing of manned level crossing No.BK-65 at km 877/23-25 between APR – AAL Section and BK-68 at km 888/13 – 15 between AAL – BUH Section under the jurisdiction of ADEN/SDL, Shahdol Division. The aforesaid contract was awarded for ₹ 4,77,95,883/- vide acceptance letter dated 14-8-2013. It was further pleaded that general conditions of contract are made applicable to the said agreement according to which in case of any dispute the matter is to be referred to the arbitrator. It is the further case of the applicant that differences and disputes arisen between the parties and the applicant vide letter dated 30-6-2017 requested the General Manager (Arbitration), SECR, Bilaspur for appointment of arbitrator, but even after lapse of four months, arbitrator has not been appointed leading to filing of this application for appointment of arbitrator under Section 11(6) of the Act of 1996.

2.2) Reply has been filed stating inter alia that clause 64.(3)(b) of the agreement entered into between the parties provides for appointment of arbitrator where applicability of Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015, wherein the right to appoint an arbitrator is with the Railways, as such same was being proposed by the non-applicants in accordance with the arbitration agreement binding between the parties. However, the claimant denying the same proposed his own panel and did not allow the Railways to appoint arbitrator in accordance with Section 12(5) of the Act of 1996. Thus, the applicant firm itself, in the

admitted facts of the case, denied appointment of arbitrator in terms of the arbitration agreement and therefore the applicant is not entitled for appointment of arbitrator and the present application for appointment of arbitrator deserves to be dismissed.

3. Mr. Harsh Wardhan, learned counsel appearing for the applicant, submits that in view of the amendment in the shape of Section 11(6A) of the Act of 1996 by the Arbitration and Conciliation (Amendment) Act, 2015, only the existence of arbitration agreement has to be looked into and all the defences have to be taken care of by the arbitral tribunal and the said amendment has come into force with effect from 23-10-2015.
4. Mr. Abhishek Sinha and Ms. S. Harshita, learned counsel appearing for the non-applicants, submits that the application as framed and filed is not maintainable and the application deserves to be rejected.
5. 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.
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. 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. The dispute raised by the non-applicants herein has to be decided by the arbitrator.
8. 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 Dilip Raosaheb Deshmukh, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice Dilip Raosaheb Deshmukh who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996.
9. The arbitration application is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge