

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No. 85 of 2017**

M/s. Galaxy Registered Office At 82, G.E. Road, Supela Square, Bhilai, District – Durg (C.G.) New Address- Block -5-A, Plot No.16, Dakshin Gangotri Supela, Bhilai, District -Durg (C.G.) through its Chief Executive namely Anil Kumar Vidyadharan, S/o N. Vidyadharan, aged about 46 years

---- **Petitioner**

Versus

M/s. Fourth Dimension Solutions Limited, registered office DSM 340, DLF Trade Tower, Shivaji Marg, New Delhi, Through- its Managing Director, Mr. Amlendu Mukharjee

---- **Respondents**

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate.
For Respondent	:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

16/02/2018

(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 agreement entered into between the parties on 25th day of August, 2015 vide (Annexure A-1) by which the Petitioner-Company was required to provide FMS, Electricity & Fuel refilling at various Districts and Block headquarters of Chhattisgarh Government to complete the CGSWAN production of the Government.

2.2) It is the case of the petitioner that though he has complied with his part of contract up to 24th May, 2017 but the amount due has not been paid to him whereas it is case of respondent that during the currency of the agreement, the petitioner M/s. Galaxy defaulted in discharge of its obligations under the agreement dated 25.8.2015, the service provided was defective, the manpower deployed was insufficient, leading to imposition of penalties on the Respondent Fourth Dimension Solutions Limited and the petitioner Company has failed to provide / improve the services in terms of the agreement dated 25.08.2015.

2.3) According to the petitioner-Company, he is entitled for Rs.2,16,40,946/-, which has been disputed by the respondent-Company, leading to filing of arbitration application for appointment of arbitrator for resolving the dispute.

(3) Learned counsel for the petitioner would submit that it is a fit case where the arbitrator can be appointed for resolution of the dispute as clause 7.1 of the agreement dated 25.08.201 provides for resolution of the dispute by the Arbitrator appointed under the provision of the Act of 1996.

(4) On the other hand, learned counsel for the respondents would submit that dispute is not arbitral dispute as the petitioner – Company has raised and submitted false and frivolous invoices with the respondent without providing any work /services to the respondent and the said false and frivolous invoices submitted by the petitioner-Company were not supported by the corresponding documents showing actual work/service provided by the petitioner-Company to the respondent and, therefore, the respondent – Fourth Dimension

Solutions Limited is not liable to pay any amount to the petitioner company against the said invoices raised by the petitioner and thus, the petitioner is not entitled for appointment of arbitrator 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) 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.** (supra) 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.

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, clause 7.1 of agreement clearly provides resolution of dispute by the arbitrator appointed under the Act of 1996. Therefore, an arbitral tribunal for resolving the dispute pertaining to the agreement has to be constituted by granting the present application. The respondent is at liberty to raise all the points before the Arbitrator and the same is expected to be decided by the Arbitrator.

(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 L.C. Bhadoo, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice L.C. Bhadoo who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

