

HIGH COURT OF CHHATTISGARH, BILASPURArbitration Application No.1 of 2018

Shai Transporters, Registered Office at Plot 8-B, Industrial Estate, Bhilai, District Durg (C.G.) 490026, through partner namely Hemant Sial, S/o Late Shri B.S. Sial, aged about 47 years, R/o 78A/3, Nehru Nagar (West), Bhilai, District Durg (C.G.)

---- Applicant

Versus

Bhilai Steel Plant (Unit of Steel Authority of India Ltd.), through C.E.O. Bhilai Steel Plant, Ispat Bhawan, Bhilai, District Durg (C.G.)

---- Non-applicant

For Applicant:	Mr. Dharmesh Shrivastava, Advocate.
For Non-applicant:	Dr. Saurabh Kumar Pande, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/08/2018

1. Invoking Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), the applicant has filed this application for appointment of arbitrator.
2. Learned counsel for the applicant submits that in order to resolve the arbitral dispute, the applicant has served notice on 5-10-2017 for appointment of arbitrator as per clause 1.01 of the Special Terms and Conditions and clause 93 of the General Conditions of Contract for appointment of arbitrator to Bhilai Steel Plant and as such, arbitrator ought to have been appointed by the Managing Director which he has not done, therefore, this application has been filed in which arbitral dispute has arisen between the parties, and, therefore, arbitrator be appointed.
3. Learned counsel for the non-applicant Bhial Steel Plant (BSP)

would submit that the applicant has not acted in accordance with Section 11(5) of the Act of 1996 and as such, the applicant has failed to act as required under the procedure by making reference to the Managing Director of BSP for appointment of arbitrator as per Section 11(6A) of the Act of 1996 and as such, the application deserves to be rejected.

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. It is not in dispute that agreement between the parties contains arbitration clause and arbitrator has to be appointed by the Managing Director, now, it is the Chief Executive Officer (CEO) to appoint an arbitrator. The only question raised is that reference has not been properly made to the CEO of BSP as required under Section 11(6) of the Act of 1996 as required under the Special Terms and Conditions as well as the General Conditions of Contract. A careful perusal of the notice dated 5-10-2017 clearly states that it is a notice under Section 11(6) of the Act of 1996 for resolving the dispute, but it is also stated that the applicant has nominated one Mr. G.B. Shrivastava as sole arbitrator which has emerged between the parties and has been referred for adjudication to him, and also requested the CEO of BSP to nominate arbitrator of his choice and to refer the matter for arbitration. Though the applicant has not properly worded the notice under Section 11(6) of the Act of 1996 for appointment of arbitrator, but memo dated 5-10-2017 clearly indicates that arbitral

dispute has arisen between the parties and the applicant has issued notice under Section 11(6) of the Act of 1996 for appointment of arbitrator. Therefore, the CEO of BSP ought to have proceeded and appointed arbitrator as provided under clause 1.01 of the Special Terms and Conditions and clause 93 of the General Conditions of Contract which he has not appointed, therefore, application has been made to this Court for appointment of arbitrator.

6. Since the agreement between the parties contains an arbitrator clause and arbitral dispute is said to have arisen between the parties, it would be expedient to allow the application by granting the said application. It is open to the non-applicant to raise all the legal pleas before the arbitrator.
7. Accordingly, in exercise of power under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice V.K. Shrivastava, retired Judge of this High Court, R/o Warehouse Road, Bilaspur, to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice V.K. Shrivastava 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.
8. The arbitration application is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge