

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 389 of 2006**

M/s. Suresh Kumar Agrawal, Engineers & Contractors, Main Road, Bistrampur, District Sarguja, Chhattisgarh. Through Shri Suresh Kumar Agrawal, Proprietor.

---- **Petitioner**

Versus

1. The Chairman cum Managing Director, South Eastern Coalfields Limited, Seepat Road, P.O. SECL, Bilaspur, Chhattisgarh.

Through :-

1. The General Manager (Civil), South Eastern Coalfields Limited, Seepat Road, P.O. SECL, Bilaspur, Chhattisgarh
2. The General Manager, South Eastern Coalfields Limited, Bhatgaon Area, District Sarguja, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Rahul Jha, Advocate
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For Respondents	:	Mr. Shailendra Shukla, Advocate
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Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

24.09.2019

Heard.

1. An agreement was entered in between the petitioner and respondent on 30.03.1998 for carrying out the work of Drifting of Incline No.1 at Nawapara Project of Bhatgaon Area and the agreement, which is on record as per the "Note : In case of any ambiguity, the civil Engineering manual shall be referred to and the provision in the CEM shall prevail upon" referred that in case of any ambiguity, the civil engineering manual shall be referred to and the provision in CEM shall prevail upon. The provision of civil engineering manual reads as under :

"14. Settlement of Disputes/Arbitration

14.1. It is incumbent upon the contractor to avoid litigations and disputes during the course of execution. However, if

such disputes take place between the contractor and the department, effort shall be made first to settle the disputes through Committees at different levels made for this purpose by the company.

The contractor should make request in writing to the Engineer Incharge for settlement of such disputes/ claims within 30 (thirty) days of arising of the cause of disputes/ claims failing which no disputes/ claims of the contractor shall be entertained by the company. If differences still persist the contractor may request in writing to the Engineer Incharge for referring the matter to a sole Arbitrator. Such request shall be made by the contractor within 90 (ninty) days of receiving the intimation from the Engineer Incharge about the final decision of the above Committees in regard to the disputes/ claims failing which the claim, difference or disputes of the contractor will be deemed to have been waived and the company shall be released and discharged of all liabilities under this contract in respect of this claims. However, it is the prerogative of the company to accede to the request of the contractor for appointment of a sole arbitrator.

14.2. Except where otherwise provided for in the contract all questions and disputes relating to meaning of the specification, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, design drawings, specification, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during commencement / the progress of the work or after the completion or abandonment thereof shall be referred to, on failure of settlement of disputes by the company and on request of the contractor as per clause 14.1 of the contract, the sole arbitration of the person appointed by the Chairman-cum-Managing Director of the company or any other person authorised by him, to appoint such arbitrator.

There shall be no objection to any such appointment that the arbitrator so appointed is an employee of the company and that in the course of his duties as an employee of the company he had expressed views on all or any of the matters in dispute or difference.

2. It is stated that subsequently some ambiguity arose in between the parties, as such by letter dated 14.07.2003 (Annexure A-8) the petitioner called upon to respondent to pay an amount of Rs.16,54,070/- along-with the interest and it was further stated in case the said payment is disputed, as per the agreement, the arbitrator may be appointed as per the Arbitration & Conciliation Act, 1996. In response to such request, the SECL by a reply dated 17.10.2003 (Annexure A-10) and further letter dated 09.02.2004 (Annexure A-11) declined to appoint arbitrator on the ground that the agreement do not contain the arbitration clause. Therefore, the arbitrator having not been appointed, the present petition is being filed.
3. Learned counsel for the petitioner submits that similar like nature of the petition has been decided in Arbitration Application No.2 of 2010 and by the judgment dated 01.01.2013, the Court has held that since the agreement referred that "in case of any ambiguity, the Civil Engineering Manual shall be referred to and the provisions in the Civil Engineering Manual shall prevail upon, which contains the arbitration clause, the arbitrator is required to be appointed.
4. This proposition is not disputed by the respondents' counsel. It is further not been disputed that the finding of such Arbitration Application No.2 of 2019 was subject of further challenge before the Supreme Court and the Supreme Court also affirmed the view taken by this Court in Arbitration Application No.2 of 2019. He relies on the judgment dated 09.03.2018 passed in Civil Appeal Nos. 3164-3165 of 2017 by the Supreme Court and would submit that since the agreement do not contain the arbitration clause, as such, the arbitrator could not be appointed.

5. In the instant case, existence of arbitration clause has been accepted by reference of Civil Engineer Manual, which contains the arbitration clause, therefore, the submission of the respondents cannot be accepted.
6. In the earlier round of litigation by order dated 01.01.2013 passed in Arbitration Application No.2 of 2010, reading of it would show that similar proposition was laid down and reference was made to the Civil Engineering Manual, which contains the arbitration clause and accordingly the arbitrator was appointed. Therefore, following the said dictum laid down by this Court, I hereby appoint Hon'ble Shri Justice V.K.Shrivastava, Former Judge of High Court of Chhattisgarh, as sole Arbitrator, subject to his consent.
7. The Hon'ble Arbitrator may settle his terms and conditions and remuneration.
8. Registry of this Court to intimate Hon'ble Shri Justice V.K. Shrivastava about his appointment as Arbitrator in the instant matter to resolve the dispute arose between the parties. Necessary papers be also sent to Hon'ble Shri Justice V.K. Shrivastava along with addresses of the parties.
9. Parties to the application are also directed to approach Hon'ble Shri Justice V.K. Shrivastava, Mridu Villa, Warehouse Road. Opp. State Legal Services, Bilaspur and to submit relevant papers and also to take part in arbitration proceedings.
10. In view of the above, this application for appointment of Arbitrator stands disposed of.

Sd/-
Goutam Bhaduri
Judge