

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARB REQ No. 6 of 2019**

M/s Price Water Housecoopers Private Limited Its Registered Office At Plot Y-14, Block EP, Sector V, Salt Lake, Kolkata-700091, And Also Having Its Office At Bulding 8,7 And 8th Floor, Tower- B, DLF Cyber City, Gurgaon-122002., District : Gurgaon, Haryana.

---- Applicant**Versus**

Chhattisgarh State Agricultural Marketing Board Through Managing Director, Government Of Chhattisgarh, Beej Bhawan, Telibanda, Raipur, Chhattisgarh. E-Mail- mdcgmandiboard@gmail.com, District : Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Trishna Das, Advocate with Shri Sameer Oraon, Advocate.
For Respondents	:	Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****26.06.2019**

Heard.

(1) This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been brought by the applicant praying for appointment of arbitrator to arbitrate the dispute between the parties.

(2) Learned counsel appearing on behalf of the applicant submit that on 6.11.2012 respondent – Chhattisgarh State Agricultural Marketing Board invited bids for design, development, implementation and maintenance of Mandi Management Information System Application Software and for setting up of Farmer Information and Facilitation Centers. The applicant's bid was lowest and on that basis, his bid was

accepted and an agreement was executed on 27.2.2013. In compliance of the terms of agreement, the applicant furnished a performance bank guarantee of Rs.1,51,62,525/- in favour of the respondent and the validity of it has been extended from time to time. After performance of work, the applicant has raised bill for payment of Rs.1,51,62,525/- on 30.6.2013 which has not been paid and no payment has been made till date. On 30.9.2013, the applicant raised another bill of Rs.2,02,16,700/-, out of which, the applicant has been paid only 50% of the amount. Despite several reminders and oral requests, the respondent has not released the remaining payment so far. By 28.5.2015, the bill of approximate Rs.3 crores was outstanding for payment to the applicant which has not been cleared yet. A legal notice was served upon the respondent on 24.5.2017 which was received and replied by the respondent on 8.8.2017. The dispute continued and remained unsettled therefore, the applicant served the respondent with an arbitration notice on 26.4.2018 by invoking the arbitration clause and proposing for appointment of Mr. Prafull N. Bharat as one of the arbitrator from its side to adjudicate the dispute. The respondent in response proposed the appointment of Mr. A.K. Samant Ray as arbitrator from its side. When the applicant approached Mr. A.K. Samant Ray, he was informed that the appointment of Mr. A.K. Samant Ray has not been confirmed by the respondent. The applicant then vide notice 6.8.2018 called upon the respondent to confirm the appointment of Mr. A.K. Samant Ray which was not done by the respondent at all. Therefore, the respondent is not acting in accordance with the arbitration clause 15.16 in the agreement between the parties, by confirming the proposed appointment of

arbitrator. Therefore, on these grounds, it is prayed that this Court by invoking the powers under Section 11(6) of the Arbitration and Conciliation Act, may appoint one independent Arbitrator for Arbitration of the dispute between the parties.

Relying the judgment of the Supreme Court in the case of **Union of India (UOI) vs. Bharat Battery Manufacturing Company (P) Limited** reported in **(2007) 7 SCC 684**, it is argued that the respondent due to his failure lost its right to appoint an arbitrator.

(3) Learned counsel for the respondent submits that on the call made by the applicant for appointment of arbitrator the respondent has made an effort for appointing Mr. A.K. Samant Ray, a retired Judge of Sub-Ordinate Judiciary as arbitrator. Subsequently, because of the circumstances beyond the control of the respondent the appointment so made could not materialize, for which the respondent cannot be held responsible. It is further submitted that the bank guarantee furnished by the applicant has extended validity up to 28.2.2021 which may be invoked by the respondent in future. Denying the contents of the applicant and the submissions made by counsel for the applicant, it is submitted that the application be dismissed.

(4) In reply, it is submitted by counsel for the applicant that the applicant has made his intention clear by extending the bank guarantee up to 28.2.2021 therefore, there is no point in invoking the bank guarantee before the resolution of dispute, which is possible after an arbitrator is appointed by this Court.

(5) Heard counsel for both the parties and perused the documents.

(6) 15.16: Dispute Resolution of the Mandi Management Information System (MMIS) – Request for Proposal (RFP):

'In the case of a dispute or difference arising between CGSAMB and the Bidder relating to any matter arising out of or connected with this Contract, such dispute or difference shall be referred to two Arbitrators, one Arbitrator to be nominated by CGSAMB and the other to be nominated by the Bidder or in case of the said Arbitrators not agreeing, then an Umpire to be appointed by the Arbitrators in writing before proceeding with the reference. In case the Arbitrators cannot agree to the Umpire, he may be nominated by the Secretary, Indian Council of Arbitration, New Delhi. The award of the Arbitrators in the event of their not agreeing with the Umpire appointed by them or by the Secretary, Indian Council of Arbitration, New Delhi, shall be final and binding on the parties.'

(7) In case any dispute between the parties is not amicably resolved by itself, then such dispute itself shall be referred to the arbitrator. One of the arbitrators shall be nominated by the respondent and another shall be nominated by the applicant, such arbitrators appointed if do not have agreement themselves, then in that case such nominated arbitrators have authority to appoint an Umpire.

(8) On perusal of the averments in the application and in the reply, it appears that the respondent has made a feeble effort in nominating an arbitrator, which was not pursued at all by confirming the same despite being called upon by the applicant to do so.

(9) Section 11(5) of the Act, 1996 very clearly provides that if the parties fail to agree in appointment of arbitrator within 30 days of request by one of the parties in that case Section 11(6) of the Act shall come into play. Hence, after due consideration, the application deserves to be allowed.

(10) Therefore, on the basis of the discussions made herein-above, this conclusion is arrived at, that it is a fit case for exercise of power under Section 11(6) of the Act, 1996. Therefore, by exercising power under Section 11(6) of the Act, 1996 under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Shri Justice S.N. Shrivastava, Former Judge of Allahabad High Court to arbitrate the dispute between the parties. Registry is directed to communicate this order to Hon'ble Shri Justice S.N. Shrivastava, who shall enter into reference after complying with the provisions contained in Section 12(2) of the Act, 1996. Learned arbitrator is requested to dispose off the matter within the time prescribed in the Act, 1996 as amended. The address of Hon'ble Shri Justice S.N. Shrivastava is as follows:

'Hon'ble Shri Justice S.N. Shrivastava,
Former Judge, Allahabad High Court,
House No.41, High Court Judges Colony,
Sector No.105, Noida,
District – Goutam Budh Nagar,
Uttar Pradesh.
Mobile No.: **94152 15266**.'

(11) The remuneration of the arbitrator shall be settled by the parties with the mutual consent.

(12) The petition is disposed off with the aforesaid directions.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE

Nimmi