

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 47 of 2017****Reserved on 25.03.2019**
Pronounced on 01.04.2019

- M/s Gaurav Electricals, Through Its Proprietor Binod Kumar Jaiswal, S/o Late Raja Ram Jaiswal, Aged About 53 Years, Having Its Office At, Opposite Goodluck Tyres, Near Bagga Hotel, Bilaspur Road, Bhanpuri, P.O. Birgaon, P.S. Khamtarai, Tehsil Raipur, Civil And Revenue District Raipur, Chhattisgarh, **---- Applicants**

Versus

1. National Thermal Power Corporation Limited Through The General Manager (C And M), P.O. Vikas Bhawan, Jamanipali 495450, District Korba, Chhattisgarh.
2. National Thermal Power Corporation Limited, Through The General Manager (Finance), P.O. Vikas Bhawan, Jamanipali 495450, District Korba, Chhattisgarh,
3. M/s M.S.T.C. Limited, Through Its Dy. Manager, E R O, Eastern Regional Office (E R O Kolkata), 225-F, A.J.C. Bose Road, Kolkata 700020, West Bengal. **---- Respondents**

For Applicant	: Shri Vivek Chopda, Advocate.
For Respondents 1 & 2	: Shri B.D.Guru, Advocate.
For Respondent No.3	: None appears, though served.

Hon'ble Shri Justice Sanjay Agrawal**CAV Order**

1. This petition has been preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) seeking for constitution of Arbitration Tribunal comprising with Sole Arbitrator as per the Arbitration clause provided under Buyer Specific Terms and Conditions (BSTC) forming the part of the auction held in pursuance of the auction notice dated 05.03.2016.

2. Briefly stated the facts of the case are that respondent No.3 M/s M.S.T.C. Limited issued auction notice on 05.03.2016 in their website for the sale of scrap items mentioned in the Auction Catalogue Report and under Auction No.

MSTC/ERO/NTPC-KORBA/9/KORBA/15-16/19664 (114298). In pursuance thereof, the petitioner has applied for Lot No.381 for purchasing 19.0 MT Scrap Insulated Copper Coil of Motor Transformer along with MS Casing where he was declared as highest bidder (H-1) and after the acceptance of his bid, he paid requisite security amount of Rs.4,88,330/- (Rupees four lakhs eighty eight thousand three hundred and thirty only). He was, thereafter, allotted AI No. MSTC/ERO/16-17/7, dated 01.04.2016 and Delivery Order vide reference No. MSTC/ERO/16-17/256 was thereafter given to him on 28.04.2016 for 19.0 MT of the said scrap. According to the petitioner, he lifted about 8.34 MT of Scrap Insulated Copper Coils out of it and balance, i.e., 10.66 MT of said item has to be lifted by him. However, he was denied by the respondents for the same and, instead started forcing the petitioner to lift some other material giving rise to filing of the instant petition for constitution of Arbitral Tribunal, in view of the arbitration clause provided under the Buyer Specific Terms and Conditions (BSTC), which reads as under:

“ARBITRATION :

Any dispute arising in connection with the interpretation or implementation of these terms and conditions shall be resolved by arbitration under the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be English. The place of arbitration shall be Kolkata, India. All disputes covered under this Arbitration clause shall be referred to the CMD, MSTC Limited, Kolkata for adjudication by him or by his nominee.”

3. Shri Vivek Chopda, learned counsel for the applicant submits that when the petitioner denied for lifting the balance item, as mentioned herein above, a legal notice for arbitration was issued on 29.04.2017 on the basis of the aforesaid clause, however, respondent No.1 in response to the said notice, has denied the same vide its notice dated 06.06.2017. He submits further that since the arbitration clause is in existence under Buyer Specific Terms and Conditions (BSTC), therefore, the Arbitration Tribunal be constituted in order to adjudicate upon the alleged dispute.

4. While opposing the aforesaid contention of the petitioner, it is submitted by Shri B.D.Guru, learned counsel for respondents No. 1 & 2 that since the dispute arose between the petitioner and the said M/s. M.S.T.C. (respondent No.3), therefore, these respondents are not liable to appoint Arbitrator. The petition is, therefore, liable to be rejected.

5. I have heard learned counsel for the parties and perused the entire documents carefully.

6. On perusal of the aforesaid pleadings of the parties, it is evident that an arbitration clause is in existence, as provided under the Buyer Specific Terms and Conditions (BSTC) and since the dispute has arisen between the parties when the petitioner was denied by the respondents for lifting the remaining 10.66 MT of Scrap Insulated Copper Coils against the total 19.0 MT of the said item and as such, the dispute can be adjudicated by the Arbitrator in the light of the said arbitration clause. Accordingly, I deem it fit to appoint the sole Arbitrator in order to adjudicate upon the alleged dispute.

7. Consequently, I hereby appoint Hon'ble Shri Justice G. Minhajuddin (Retd.), Former Judge of this High Court, G-1, Alka Avenue, Near Uslapur Railway Station, Bilaspur (C.G.), as a Sole Arbitrator. Registry is directed to communicate this order to Hon'ble Shri Justice Minhajuddin (Retd.), who shall enter into the reference in accordance with law.

8. Parties are directed to approach the Hon'ble Arbitrator at the given address on 11.04.2019 and to submit papers and to take part in arbitration proceedings.

9. The petition is accordingly allowed. No order as to costs. Sd/-

(Sanjay Agrawal)
Judge