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HIGH COURT OF CHHATTISGARH, BILASPUR

ARB. A. No. 14 of 2014

M/s. Nand Kishore Agrawal, Civil Engineer and Contractor, Through- Nand Kishore Agrawal, Age- 57 Years, S/o. Late H.R. Agrawal, R/o. Agora Margi Behind City Kotwali, Thana- City Kotwali, Korba, Tah. and District Korba (C.G.)

---- Applicant

Versus

1. Chhattisgarh State Electricity Board, Through - Its Managing Director, Power Generation Company Ltd., Vidyut Sewa Bhawan, Daganiya, Raipur C.G.
2. Chief Engineer (Civil) Chhattisgarh State Power Generation Company Ltd., Daganiya, Raipur C.G.
3. Chief Engineer (Civil Circle-2) No. 1, Chhattisgarh State Power Generation Company Ltd., Korba East, Tah. and Distt. Korba C.G.,
4. Executive Engineer (Civil) Sudhar Sambhag No. 01, Chhattisgarh State Power Generation Company Ltd., Korba (East), P.S. Korba, Tah. and Distt. Korba C.G.

-----Respondent

For Applicant : Mr. Ravi Ranjan Sinha, Advocate

For Respondents : Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

29/04/2019

1. Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short 'the Act, 1996') praying for appointment of sole independent arbitrator to adjudicate the dispute between the parties.

2. It is submitted by the counsel for the applicant that the applicant is a partnership firm engaged in construction work. The applicant received a work order from the respondents for construction of R.C.C. wing wall on the right side of Abutment of railway bridge across Dengur Nala at Korba.
3. Both the parties entered into an agreement and then the applicant has completed the work assigned and has also done some extra construction work. When the applicant raised his claim, before the respondents, his claim for extra construction done was not considered. When the applicant raised the dispute in accordance with the Clause-27 of the agreement, a Board was constituted for examining the same and the Board so constituted passed an award in the form of letter dated 22.08.2009 rejecting the claim of the applicant.
4. The applicant then challenged the said award before the Court of District Judge, Korba in M.J.C. No.29/2009 and the same was rejected by the Court of District Judge by order dated 22.07.2010 mentioning that no award has been passed in this case. The applicant then filed an appeal under Section 37 of the Act before this Court but the same was also dismissed by this Court by order dated 23.07.2013 in Arbitration Appeal No. 59/2013 making an observation that appeal is premature and liberty was granted to the applicant to approach the authorities to seek settlement in terms of Clause -27 of the agreement. The applicant then again filed review petition No.1017/2013, which was again dismissed by this Court on

12.12.2013.

5. It is submitted by the counsel for the applicant that respondents have clearly failed to perform in accordance with the terms and Clause -27 of the agreement, therefore, the respondents have failed to act in accordance with the arbitration clause and the situation has arisen under Section 11 (5) of the Arbitration and Conciliation Act, therefore, the prayer has been made to invoke the power under Section 11 (6) of the Act and appoint a sole arbitrator to arbitrate the dispute between the parties.
6. Counsel for the respondents submits that the applicant had challenged the order of the District Court in arbitration appeal No.13/2011, before this Court in which this Court by order dated 04.04.2013, has clearly held that Clause -27 of the agreement is only related to settlement of dispute and not related to arbitration, even then, the parties were given liberty to invoke the arbitration jurisdiction in terms of Section 11 of the Act. It is submitted that subsequent to that, application under Section 11 of the Act, 1996 filed by the applicant was dismissed by this Court as being premature and the review petition for the same has also been dismissed. Thereafter, the applicant was required to approach the respondents for settlement of dispute in accordance with Clause-27 of the agreement but the applicant has never approached the respondents. Therefore, the application filed by the applicant is still premature and not maintainable.

7. In reply, counsel for the applicant submits that direction of this Court vide order dated 04.04.2013 passed in arbitration appeal No.13/2011 has been complied with by filing this application. Hence, the application filed is maintainable.
8. I have heard the learned counsel for the parties and perused the record attached along with the application.
9. On perusal of the record and all the documents filed by both the parties it has appeared that the applicant raised the claim for additional construction made by him and the same was rejected by letter dated 22.08.2009. The applicant then raised the claim of the additional work to the respondents on the basis of which one committee was constituted to examine the claim and the same committee has rejected the claim of the applicant vide order dated 22.08.2009.
10. Clause -27 of the agreement on which the applicant has raised his claim is as under :-

“Clause - 27. Settlement of disputes and arbitration.

All question relating to the meaning of the specifications, design, drawing and instructions issued under this contract and as to the quality of workmanship or materials used on the work or as to any other questions, claim, right, matters or thinks whatsoever in any way arising out of or relating to the contract designs, drawing, specifications, estimates, instructions, orders or the conditions or otherwise concerning the work or the execution or failure to execute the same whether arising during the execution of the work or after the completion or

abandonment thereof shall be referred to the Superintending Engineer (Civil) in writing for his decision within a period of 30 days of such occurrence. Thereupon the Superintending Engineer (Civil) shall give his written instructions and/or decision within a period of 30 days of such request.

Upon receipt of written instructions or decision, the contractor shall promptly proceed without delay to comply such instructions or decision. If the S.E. (C) fails to give his instructions or decision in writing within a period of 30 days after being requested or if the Contractor is aggrieved against the decision of the S.E.(Civil) the Contractor may within 30 days thereafter appeal to the Addl. Chief Engineer (Civil) who shall afford an opportunity to the contractor to be heard and to offer evidence in support of this appeal. If the contractor is not satisfied with the decision of the Addl. C.E. (Civil) he may within 30 days thereafter, appeal to the C.E. (Civil) for his decision on the dispute. In case there is no Addl. C.E. (C) or C.E.C.E. (Civil) supervising the works the appeal should be made directly of the C.E. (Civil T & D), who on receipt of the representation from the contractor, may appoint an officer who is not concerned with the works to decide the dispute within 30 days. In case the contractor who is aggrieved by the decision of the Chief Engineer (Civil)/E.D. (Civil), he may refer the matter to Chief Engineer (C)/E.D.(Civil) within a period of 30 days from the date of the said decision so that the Board may appoint a Committee to decide the dispute.”

11. On closely scrutinizing the Clause-27 of the agreement and considering the documents regarding correspondence made by the applicant and the representation made regarding his claim to the respondents, the view is again very clear that the applicant had

never raised dispute to be arbitrated in accordance with Clause-27 by making a demand for the same to be examined by Superintending Engineer (Civil). If any, such demand for arbitrating the dispute should have been made by the applicant then it was compulsion on the part of the respondents to have the dispute decided by the said authority, which is mentioned in Clause-27 of the agreement and thereafter, the Clause -27 provides for other options also.

12. Hence, after over all consideration on the facts and circumstances of this case and the submissions made by both the parties, I am of this view that the applicant has never made any claim before the respondents to be decided in terms of Clause-27 of the agreement, therefore, it can not be said that the jurisdiction of this Court under Section 11 (6) of the Act, 1996 has started for considering on the appointment of arbitrator.
13. After due consideration, the application is rejected on the basis of the observation made herein above. However, the applicant is at liberty to approach the respondents for seeking remedy as provided in terms of Clause -27 of the agreement between the parties.

Sd/-
(Rajendra Chandra Singh Samant)
Judge