AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 37 of 2018

- M/s Sweta Construction Through- Its Partner Rajkumar Agrawal, S/o- Late Shri Babulal Agrawal, R/o- 388 Indira Vihar, T.P. Nagar, Korba, Chhattisgarh

---- Petitioner

Versus

- Chhattisgarh State Power Generation Company Limited Through- The Executive Engineer (Civil) Division-III, MTTPP, Marwa, District- Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant	Mr. Rishabh Garg, Advocate
For Respondent	Mr. Raja Sharma, Advocate

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra, J.

7/2/2019

1. Heard.

2. The Commercial Court having allowed the respondent's appeal to set-aside the award passed by the Sole Arbitrator on the ground of lack of jurisdiction in view of the judgment rendered by the Supreme Court in the matter of **Madhya Pradesh Rural**

Road Development Authority Vs. **M/s. L.G. Chaudhary Engineers and Contractors** as also **M/s. Lion Engineering Consultants** Vs. **State of M.P. and others**, **(2018) 5 Scale 103**, we propose to hear and dispose of the matter finally at the admission stage, for which, learned counsel for the parties have agreed.

3. Heard learned counsel for the parties.

4. Indisputably, the contract between the parties would be a works contract as defined under CG Arbitration Tribunal Act, 1983 (in short "the Act, 1983'). Any arbitration proceeding to adjudicate a dispute arising out of such works contract has to be adjudicated by the Tribunal constituted under Section 7 of the Act, 1983.

5. The Supreme Court in the matter of **M/s. L.G. Chaudhary Engineers and Contractors (supra)** has set at rest the said issue as to the applicability of the Act, 1983 and exclusion of adjudicating process by any other authority, therefore, the matter is no longer *res integra*.

6. In the above view of the matter, even if the Arbitrator was appointed by the respondent on the application moved by the appellant, the said Arbitrator would not have jurisdiction to adjudicate the dispute between the parties, which arises out of a works contract.

7. The Commercial Court has, therefore, not committed any illegality in setting aside the award passed by the Arbitrator.

8. Mr. Rishabh Garg, learned counsel for the appellant, would refer to para 21 of the judgment rendered in the matter of **M/s. L.G. Chaudhary Engineers and Contractors (supra)** to contend that the Supreme Court has not expressed any opinion on the applicability of the said Act where the award has already been passed, therefore, this issue is still open for consideration by this Court.

9. But for the subsequent decision in the matter of **M/s. Lion Engineering Consultants (supra)**, the plea raised by Mr. Garg, could have been entertained for discussion. However, in the matter of **M/s. Lion Engineering Consultants (supra)**, the issue as to whether a plea in respect of absence of jurisdiction of the Arbitrator in a case where the Act, 1983 applies by way of moving an application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "the Act, 1996") had fallen for consideration and the Supreme Court allowed the said objection to be raised in the application under Section 34 of the Act, 1996. Therefore, as of now, the Supreme Court is of the opinion that such objection could be raised at the stage of Section 34 application even if the objection as to the jurisdiction was not raised earlier at the stage of Section 16 of the Act, 1996.

10. If raising of objection for the first time by way of an application under Section 34 is permissible, it goes without saying that such objection has to be allowed in view of the law down in the matter of **M/s. L.G. Chaudhary Engineers and Contractors (supra)**.

11. For the above stated reasons, we are in full agreement with the judgment rendered by the Commercial Court setting aside the award passed by the Arbitrator .

12. At this stage, Mr. Garg would submit that fresh application before the Tribunal constituted under the Act, 1983 would be barred by limitation and the petitioner would suffer despite appointment of Arbitrator by the respondent without any demur on the earlier occasion.

13. On this aspect of the matter, we only observe that while moving an application under Section 7 of the Act,1983, it will be open for the appellant to raise a plea for extension of time under Section 14 of the Limitation Act, if permissible in law.

Sd/- Sd/-

(Prashant Kumar Mishra) **(Vimla Singh Kapoor)**

Judge Judge

Shyna