

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBR No. 32 of 2018**

- M/s Mahaveera Enterprises Through Its Sole Proprietor, Shri Murari Kabra, Age 57 Years, S/o Shri Basudev Kabra, C- 102, Ashoka Ratna, Vidhan Sabha Road, Raipur Chhattisgarh- 492007

---- Petitioner**Versus**

1. South East Central Railways Through Its General Manager, Office Of General Manager, Bilaspur Chhattisgarh- 495004
2. Senior Divisional Material Manager D R M Office Complex, S E C Railway, Raipur Chhattisgarh- 492008
3. Senior Section Engineer Electrical (General), Durg District Durg Chhattisgarh
4. Senior Section Engineer Electrical (General) Raipur District Raipur Chhattisgarh
5. Senior Section Engineer Electrical (General) D R M Office Complex, S E C Railway, Raipur Chhattisgarh- 492008

---- Respondents

For Petitioner : Shri Abhishek Vinod Deshmukh, Advocate

For Respondents/SECR : Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/07/2019**

1. Heard.
2. The present petition is filed invoking Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) for appointment of arbitrator.

3. Facts of this case are that the respondents have placed orders to supply 138 numbers of LED Street Light complete fitting – 25 Watts of Havells Make; and 10 numbers of and 12 numbers of Outdoor type LED Street Light complete fitting – 25 Watts of Havells or CG make in between 26.07.2017 to 17.10.2017. According to the applicant, the said supply was made in entirety on 30.07.2018 but despite that the sale consideration price was not paid. Consequent thereto the applicant by letter dated 30.07.2018 submitted various claims & demand was made and eventually an arbitrator was requested to be appointed. Thereby right to appoint the arbitrator was exercised. It is further stated that despite such right having been invoked, no arbitrator was appointed instead it was informed that the letters of the requests have been forwarded to the Executive and PHOD of the concerned department. It is further contended that the applicant again reminded by different letters to appoint the arbitrator but no arbitrator was appointed, resulting into filing of this petition.
4. Learned counsel for the applicant would submit that therefore, an arbitrator may be appointed as per clause 2900 of the General Conditions of Contract which is existing, to which both the parties have agreed.
5. Learned counsel for the respondents opposes the same and would submit that the applicant has not legally invoked the right to appoint the arbitrator and dispute the claim raised by the applicant.
6. Be that as it may, the contract in between the applicant and respondents

is not in dispute that the applicant claimed to have supplied certain goods for which he claims release of the sale consideration. The letter dated 30.07.2018 addressed to the General Manager-Arbitration, G. M. Buidling, SEC Railway, Bilaspur, is perused. The subject of the letter is with respect of the appointment of arbitrator. The postal receipt of the same is affixed at the bottom of the said letter. Therefore, apparently, it appears that the applicant has invoked his right to appoint the arbitrator by the letter dated 30.07.2018 (Annexure -B) as per the clause 2900 of the General Conditions of Contract. It clearly appears that till today no arbitrator has been appointed, therefore, under the circumstances, as per the terms of the contract, arbitrator namely Ms. Anita Jha, former Higher Judicial Officer, is appointed as an arbitrator to arbitrate the matter, subject to her consent. Registry is directed to send the necessary communication to Ms. Anita Jha and thereafter the procedure for arbitration may be followed according to the Act, 1996 and Rules made thereunder. The remuneration of the arbitrator shall be mutually decided by the parties.

7. Accordingly, the petition is allowed.

Sd/-

Goutam Bhaduri
Judge