

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBR No. 10 of 2020**

M/s. Bansal - Amit (JV) Through Its Authorized Signatory Shri Amit Kumar Singh, Aged About 47 Years S/o Shri Shreeprakash Singh, Having Office At A-1, Shailendra Nagar, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through Its General Manager, South East Central Railways, Office Of General Manager, Bilaspur, Chhattisgarh 495004
2. Chief Administrative Officer, Office Of Chief Administrative Officer, South East Central Railways, Bilaspur, Chhattisgarh 495004
3. Chief Engineer (Con)/II/Bilaspur, South East Central Railways, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Vinod Deshmukh, Advocate
For Respondents	:	Mr. Abhishek Sinha, Advocate, on advance copy

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.06.2020**

1. The present is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. It appears that the applicant was awarded with a contract and that the said contract is still in operation. Meanwhile, the applicant has raised certain claims in respect of overhead cost that he has incurred and also in respect of idling of machinery and also reimbursement of GST amount.

3. Perusal of the record would show that the parties had entered into an agreement on 26.05.2017. Clause 63 of the said agreement deals with the settlement of dispute and Clause 64 deals with the settlement of dispute by way of arbitration.
4. Learned standing counsel for the Railways referring to Clause 63 of the Agreement submits that it appears that the applicant has not approached the authority for resolving the disputes or differences under Clause 63 of the Agreement. He submits that unless the said provision is invoked, it would not be proper at this juncture to straightaway invoke the provisions of Clause 64 for settlement of disputes by way of arbitration.
5. Counsel for the applicant, at this juncture, submits that he has already approached the authorities on 24.02.2020 for resolving the claim of the applicant. However, the authorities vide their correspondence dated 4th March, 2020 have asked the applicant to undertake giving up the right under section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015 enabling the authorities to proceed further.
6. From the document dated 04.03.2020 of the respondents it does not appear that the respondents have processed the claim of the applicant in the light of Clause 63 of the agreement, entered into between the parties.
7. A plain reading of Clause 64 of the Agreement would reveal that it is only on failure of settlement of dispute under Section 63, that the provisions of Section 64 would be applicable or come into force.
8. Given the said factual position as it stands, this Court is of the opinion that the present application can be disposed of directing the applicant

to approach the concerned respondent authorities afresh in addition to the claim that he had already made on 24.02.2020 within a period of 15 days from the date of receipt of copy of this order. The respondent authorities treating both these applications as a claim under Clause 63 of the agreement entered into between the parties, decide the same in accordance with law. It is expected that the respondents shall take a decision on the applications of the applicant at the earliest preferably within a period of 90 days from the date of receipt of the fresh application of the applicant along with this order.

9. Accordingly, the present application stands disposed of reserving the right of the applicant to avail appropriate remedies under the law.

Sd/-
P. Sam Koshy
Judge