

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 22 of 2019**

1. M/s Abhinav Constructions, Through Suman Kumar S/o Shri Saligram Aged About 55 Years Office At Plot No. 61, Behind Blue Bird School, Near Muskan Dental Clinic, Kosabadi Korba, Tehsil And District Korba Chhattisgarh.
2. Suman Kumar S/o Shri Saligram Aged About 55 Years R/o M I G - I / 139, Pt. Ravi Shankar Shukla Nagar, Korba Tehsil And District Korba Chhattisgarh.
3. Pawan Kumar S/o. Shri Saligram, Aged about 55 years, R/o. MIG-I/51, Pt. Ravi Shankar Shukla Nagar, Korba, Tehsil and District Korba, Chhattisgarh
4. Mira Devi, W/o. Shri Suman Kumar, Aged about 53 years, R/o. MIG-I/51, Pt. Ravi Shankar Shukla Nagar, Korba, Tehsil and District Korba, Chhattisgarh

---- Applicants**Versus**

1. Manoj Kumar S/o Shivdani Singh Aged About 47 Years R/o Plot No. 134, SADA Colony, Jamanipali, NTPC, Post Jamanipali, Tehsil Katghora District Korba Chhattisgarh.
2. Smt. Renu Devi W/o Shri Manoj Kumar Aged About 47 Years R/o Plot No. 134, SADA Colony, Jamanipali, NTPC, Post Jamanipali, Tehsil Katghora District Korba Chhattisgarh.
3. Sujit Kumar S/o Shri Shivdani Singh Aged About 43 Years R/o MIG-I/139, Maharana Pratap Nagar, Korba, Tehsil And District Korba Chhattisgarh.

---- Respondents

For Applicants	:	Mr. Anand Mohan Tiwari, Advocate
For Respondents	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/09/2020**

1. Present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting for appointment of an Arbitrator. According to the applicants, the application has been filed as the respondents have failed to appoint an Arbitrator for redressal of the dispute between the parties.

2. The facts which led to the filing of the present application is that the applicants and the non-applicants were partners in M/s. Abhinav Constructions from the time of establishment of the partnership in the year 2004. The said firm i.e. the partnership firm was engaged in the business of Engineers and Contractors. The partnership deed which was executed in the year 2004 was amended on 01.04.2010. That, in the partnership deed itself both in the original deed dated 10.08.2004 as also in the deed dated 01.04.2010, it was resolved between the parties that any dispute among them would be resolved by invoking the arbitration clause by referring the dispute to an Arbitrator. In due course of time, three of the partners in the said partnership deed namely Manoj Kumar, Smt. Renu Devi and Sujeet Kumar decided to retire from the said partnership firm, they are the respondents in the present Arbitration Application and the remaining partners, the applicants herein particularly the applicants No. 2 to 4 continued with the firm.
3. Upon retirement of three of the partners, some disputes arose on the transfer of assets and the payments to be made between the partners of the original firm known as "M/s. Abhinav Constructions". An agreement was again entered into between the parties on 24.07.2018 in which also there was a clause dealing with the mechanism for resolution and settlement of dispute and the recourse provided was that of arbitration. It is invoking these provisions of the agreement and the partnership deed with which the applicants has approached the this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

4. Mr. Manoj Paranjpe, Advocate entered appearance on behalf of the respondents and both the parties agreed upon the Clause in the agreements and partnership deed for the settlement of dispute by way of an Arbitration. Both the parties i.e. the applicants as well as the respondents arrived at a consenses on the name of Hon'ble Mr. Justice Dhirendra Mishra, Retired Judge of this High Court, to be appointed as an Arbitrator to be appointed as an Arbitrator to resolve and redress the grievance between the applicants and the respondents.
5. The respondents herein have entered appearance and have submitted their objection and the sole objection that the respondents have raised is the fact that all the agreements and the partnership deeds were confined upon the partners to the firm and since the non-applicants already have retired from the partnership and the partnership firm, they no longer have partners and therefore neither the agreement nor the partnership deed or any of the conditions thereon shall be applicable upon the applicants and further objection was that the nature of dispute was not one which was arbitrable and therefore prayed for rejection of the application.
6. Having heard the contentions put forth on either side and on perusal of record, admittedly, in the two partnership deeds there was a specific clause for resorting two arbitrations in the event of any dispute between the partners. Further reiterated in the agreement that was further entered into between the parties in the year 2018. Moreover, the broad reading of the documents enclosed along with the Arbitration application, it clearly reflects that the dispute between

the parties was more in respect of the distribution of the assets and the liabilities on the retirement of three of the partners. This dispute of distribution of assets and liabilities definitely is one which is an arbitrable dispute and since there is a categorical acceptance to the clauses to the partnership deed and the agreement that was further entered into between the parties in the year 2018 for resorting to the arbitration proceedings for resolving the disputes. This Court has no hesitation in reaching to the conclusion that the present is also a fit case which firstly is arbitrable and secondly needs to be resolved by way of an arbitration. During the course of the hearing, the counsel for the parties had given their consent for appointment of Hon'ble Justice Dhirendra Mishra, Retired Judge of this High Court to be appointed as an Arbitrator to resolve and redress the grievance between the applicants and the non-applicants. Hence Hon'ble Justice Dhirendra Mishra, Retired Judge of this High Court is hereby appointed as an Arbitrator in the present dispute between the parties.

7. The Registry is directed to communicate this order to Hon'ble Mr. Justice Dhirendra Mishra to enter upon reference after complying with the provisions contained under Section 12(2) of the Arbitration and Conciliation Act, 1996 and to adjudicate upon the dispute as expeditiously as possible in accordance with the Act of 1996.
8. The remuneration of the Arbitrator shall be settled with the mutual consent by the parties.
9. The arbitration application accordingly stands allowed to the extent indicated herein above.

10. It has been submitted by the counsel for the parties that there are certain original documents which have been filed in the present Arbitration Application which may be returned to the parties. Given the said facts, subject to the parties submitting the photocopies of all the original documents, the original documents in turn can be returned to the parties. The Registry to take prompt action in this regard upon the parties approaching for return of the original documents.
11. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved