

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 2 of 2019**

M/s. K.I. Associates Through Its Proprietor, Smt. Rashmi Dubey (Dead) Through LR's Chitrangada Dubey D/o Shri Ajay Dubey, Aged About 25 Years, R/o A/37, Raghu Chhaya, Priyadarshni Nagar, Bilaspur, Police Station Civil Lines, District : Bilaspur, Chhattisgarh

---- Applicant**Versus**

Divisional Railway Manager Bilaspur Division Of South East Central Railway, Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Sanjay Agrawal, Advocate
For Respondent	:	Mr. R.S. Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

10/09/2021

1. The present is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent sole arbitrator for resolving the dispute between the parties.
2. The applicant M/s. K.I. Associates was a proprietorship firm having a license for provision of Kettering services at General Minor Unit No.2 Stall Type Refreshment Room at Pendra Road Railway Station of D-category. The respondents are the department of Railway, who have the possession and also have the administrative control over the said Pendra Road Railway Station. A, advertisement was issued for grant of license for providing Kettering services at Unit No.2 Stall Type Refreshment Room at Pendra Road Railway Station of D-category. The then proprietor

of the said K.I. Associates the applicant Smt. Rashmi Dubey had participated in the said tender proceedings and was found successful and the license agreement was executed at Bilaspur on 17.09.2013 between the applicant and the respondents. The license permitted the applicant to provide food and beverages services to the passengers as per the Kettering policy, 2010 of the Railways.

3. The applicant was allotted a refreshment room at platform No.1 at the Pendra Road Railway Station. However, the license stood terminated vide order dated 18.09.2014. The order of termination of license was subjected to challenge by way of a writ petition under Article 227 vide WPC No. 2322/2014. However, since in terms of the agreement, there was an arbitration Clause, the writ petition was disposed of for resolving the dispute by availing the recourse available under the Arbitration Law. Initially an arbitration application was filed under Section 11(6) of the Act of 1996 i.e. Arbitration Application No. 6 of 2015. However, since the original proprietor Smt. Rashmi Dubey had died on 12.04.2015, thereafter the proprietorship stood converted into a partnership firm. Thereafter, the arbitration application was withdrawn with a liberty to file a duly constituted application for appointment of an arbitrator under Section 11(6) through the legal representative of the original proprietor of the said applicant-firm. The said application was disposed of on 16.05.2017 and thereafter the present application has been filed through the daughter of the earlier proprietor and who is pursuing the arbitration application.
4. The counsel for the applicant submits that they intend to avail the remedy of arbitration to question the alleged termination of the license given to the said applicant-firm by the Railways on 17.09.2013 and therefore the

request for an arbitrator to be appointed to adjudicate upon the dispute between the parties.

5. The counsel for the respondents however opposes the application firstly on the ground of the competency of the present application to pursue the application and secondly the claim application being highly belated and the same be rejected on the ground of limitation.
6. It is a settled position of law by now that an application under Section 11(6) is nothing but a proceeding to make a reference to an arbitrator in the light of an arbitration clause in a contractual agreement. Disputed question of facts are not to be considered and adjudicated upon by the High Court in the course of exercise of the powers conferred under the High Court under Section 11(6) of the Act of 1996. These are objections and contentions which could still be considered by the arbitrator taking into consideration the evidence to be lead by either parties.
7. Another striking fact which has been revealed during the course of the hearing is that the Department of Railways themselves during the pendency of the previous arbitration application i.e. Arbitration Application No.6/2016 had appointed a sole arbitrator vide order dated 15.06.2015 Annexure A/10 for resolving the dispute between the parties. Thus, the department of Railways themselves had on an earlier occasion principally accepted that the dispute is one which is to be resolved by way of arbitration and for which an arbitration they had been appointed by the Railways themselves. The said appointment of the arbitrator was stayed by this Court contending that since the arbitration application under Section 11(6) has already been filed before the High Court and the matter was seized for hearing before the High Court, the Railway authorities

could not have therefore now appointed an arbitrator which they should have appointed earlier.

8. In view of the fact that the Railway Department themselves had on an earlier occasion appointed an arbitrator which was not accepted by this Court. This Court is of the opinion that it is a fit case where the matter has to be referred to an Arbitrator to be appointed by this Court for adjudicating upon the dispute between the parties. The counsel appearing on either side reached to a consensus for appointment of Hon'ble Mr. Justice Dhirendra Mishra (Retd.) Former Judge of this High Court to be appointed as a sole arbitrator for adjudicating upon the dispute between the parties.
9. In view of the joint proposal made by the parties in exercise of the powers conferred under Section 11(6) of the Act of 1996 under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Mr. Justice Dhirendra Mishra (Retd.) to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of Arbitration and Conciliation Act, 1996.
10. The Registry is directed to communicate this order to Hon'ble Mr. Justice Dhirendra Mishra (Retd.) 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.
11. The remuneration of the Arbitrator shall be settled with the mutual consent by the parties.

12. The arbitration application accordingly stands allowed to the extent indicated herein above.

13. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved