

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 13 of 2021**

M/s. S. Narinder Singh And Co. Engineers And Govt. Contractor, Prop. Manjeet Singh S/o Narinder Singh, Age 68 Years Residence A-85, Power City Jamnipali, Korba Chhattisgarh.

---- Applicant**Versus**

1. National Thermal Power Corporation Limited Through Chairman Cum Managing Director N.T.P.C. Bhawan Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi 110003.
2. National Thermal Power Corporation Limited Korba Through Group General Manager (Contractual Transaction) N.T.P.C. Ltd., Post Vikas Bhawan, Jamnipali Korba Chhattisgarh. 495450

---- Respondents

For Applicant	:	Mr. H.B. Agrawal, Sr. Advocate along with Ms. Swati Agrawal, Advocate
For Respondents	:	Mr. Rohit Sharma, Advocate

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

03/09/2021

1. The present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting for appointment of an independent sole arbitrator for resolving the dispute between the applicant and the respondents.
2. The applicant is a contractor and had participated in a tender floated by the respondents-NTPC in respect of "fixing of wire mesh doors at Kaveri Vihar in PTS". The total value of the work was Rs.72,35,706/- only. The contract was to commence on 09.03.2015 and the contract period was for 12 months starting from 09.03.2015 and culminating on 08.03.2016. According to the applicant, the work schedule was revised by the

respondents-NTPC from time to time and therefore the work could not be completed within the scheduled period of the contract and in between the respondents-NTPC had extended the service period from 09.03.2015 to 08.03.2017. However, it is alleged that on account of non-clearing of the regular running bills of the applicant-contractor and in addition to the deductions that were made from the running bills without any sufficient and cogent reasons, the applicant could not conclude the work.

3. The applicant thereafter invoking the arbitration clause in terms of the agreement entered into between the parties sought for appointment of an Arbitrator for resolving the dispute. The request of the applicant for appointment of a sole arbitrator was not acceded to by the respondents-NTPC which has led to the filing of the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996.
4. The application under Section 11(6) was filed by the applicant on 01.04.2021. The notices were issued to the respondents and the respondents in turn have filed their return. In the return the respondents have disputed the claim of the applicant. However, the respondents have taken a stand that correspondences were made to the applicant for giving their consent for resolving the dispute in terms of the agreement by referring the matter to the Expert Settlement Council and the Expert Settlement Council had to be appointed by the respondents-NTPC. The dispute if still not settled the arbitration clause could had been resorted to .
5. Having heard the contentions put forth on either side and on perusal of records, admittedly there was a contract executed between the applicant and the respondents in respect of work order dated 03.03.2015 for “fixing

of wire mesh doors at Kaveri Vihar in PTS”. Total value of the work order was Rs.72,35,706/-. The work was to be completed within a period of 12 months starting from 09.03.2015. In the course of execution of the work certain disputes arose so far as the bills raised by the applicant and also in respect of certain deductions which were made by the respondents-NTPC from the running bills. The applicant has sent a request to the respondents for settlement of their dues to the tune of Rs.1,18,25,262/- which was the final bill and the total outstanding against the work executed by the applicant along with interest @18%. The applicant also issued a legal notice on 06.10.2020 demanding for referring of dispute to the arbitration in terms of the agreement between the parties.

6. From the pleadings and documents that are available it appears that the respondents also had responded to the legal notice vide their correspondence Annexure R/2 dated 25.11.2020 and finally the respondents-NTPC vide their correspondence dated 28.04.2021 i.e. much after the present application under Section 11(6) was filed, accepted the request of the applicant for deciding the disputes by way of arbitration and proposed 4 names from among whom arbitrator was to be appointed. The proposal put forth by the respondents vide Annexure R/6 was not acceptable to the applicant as was contended by the learned counsel for the applicant stating that since the decision to resolve the dispute by way of arbitration was accepted by the applicant after the application under Section 11(6) was filed, let the Court itself appoint a sole arbitrator for resolving the disputes between the two parties.
7. The request for appointment of an arbitrator by the Court was opposed by the respondents on the ground that under the agreement which was

executed between the parties a mechanism is provided. Therefore the conditions to the agreement shall prevail and the applicant may be directed to submit his option from among the 4 names suggested by the respondents. What is to be appreciated at this juncture is that as per the terms and conditions of the agreement on a request for conciliation by one of the parties, if an appropriate decision is not taken within 30 days period, it shall be deemed to have been rejected.

8. Having heard the contentions put forth on either side and on perusal of record what is apparent is that the applicant raised a claim for settlement of his final dues and outstanding amount as on 13.05.2019. Thereafter a legal notice again was sent on 06.10.2020 however within a reasonable period, the respondents did not respond to the legal notice by resorting for the mechanism available under the agreement. It is only after the filing of the present application that the respondents have accepted the request for settlement of dispute by arbitration and by offering 4 names, which at this juncture has not been accepted by the applicant stating that they would rather go in for settlement of the dispute by a sole arbitrator appointed by the High Court who would be more neutral and totally unbiased to the dispute.
9. Given the submissions made by the counsel on either side and on perusal of record, this Court is also of the view that taking into consideration the fact that the respondents did not timely respond to the notice for settlement of the dispute as per the agreement, it has to be presumed that at the first instance the respondents were not inclined to refer the matter for arbitration. It is only after the present application under Section 11(6) that was filed before the High Court that the

respondents have accepted the proposal for appointment of a sole arbitrator. This Court therefore is inclined to appoint an Arbitrator rather than referring the matter to the arbitrator as proposed by the respondents-NTPC.

10. That, the Hon'ble Supreme Court also in the case of “**Perkins Eastman Architects DPC & Another v. HSCC (India) Limited**” **2019 SCC Online SC 1517** has also not approved of the procedure of the unilateral appointment of Arbitrator by one of the parties in dispute. Moreover, in the instant case the proposed names floated by the respondents being much after the prescribed period as per the agreement, the applicant cannot be forced to accept the same.
11. This Court therefore 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.
12. 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.

13. 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.
14. The remuneration of the Arbitrator shall be settled with the mutual consent by the parties.
15. The arbitration application accordingly stands allowed to the extent indicated herein above.
16. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved