

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBR No. 16 of 2020**

Intercontinental Consultants And Technocrats Private Limited
Through Its Authorised Signatory Pranav Sharma, Aged About 44
Years, Head Corporate Relations, R/o H No. A-1/73, Safdarjung,
Enclave, New Delhi 110001

---- Applicant**Versus**

- State Of Chhattisgarh Through Secretary, Public Works Department,
Represented By Project Director, ADB Project, CGPWD, Mahanadi
Bhawan, Mantralaya, Naya Raipur, Chhattisgarh

---- Respondents

For Applicant	:	Mr. Apurv Goyal, Advocate
For Respondent	:	Mr. Jitendra Pali, Dy. Advocate General

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

13/08/2021

1. Present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "the Act of 1996") seeking for appointment of an Arbitrator for settlement of the dispute between applicant and respondent.
2. The brief facts, relevant for disposal of the present application, are that the applicant is a Company registered under the Companies Act, 1956 and is engaged in providing consultancy services. That on 04.03.2015 applicant entered into a contract with respondent for providing consultancy services for construction & supervision and consultancy of civil works at Bilaspur, Chhattisgarh. It was agreed that respondent will reimburse service tax which would be paid by applicant. The financial proposal amounted to Rs.15,17,82,630/-.

The applicant has provided services and paid service tax to the tune of Rs.3,16,53,754/- and submitted invoices with the respondent for making payment of the same by way of reimbursement. Despite various reminders and correspondence, the respondent has not made any payment to applicant. Hence, this dispute.

3. Thereafter applicant proposed for amicable settlement, which was not accepted and communicated, therefore, applicant has become entitled to invoke Clause-49 of special conditions of contract, for adjudication of the dispute by an independent arbitrator. Applicant also issued a notice to respondent on 31.05.2018 which was replied by respondent stating that the State Tribunal constituted under the State Madhyastam Adhikaran Adhiniyam, 1983 is the recourse available.
4. It is also pertinent to mention here that the applicant had approached the Chhattisgarh Arbitration Tribunal at Raipur and filed a claim on 01.10.2018 and deposited court fees of Rs. 5,53,871/-. However, vide order dated 21.01.2020 (Annexure A/8), the Arbitration Tribunal upon knowledge of the order passed in ARBR No. 23 of 2018 decided by this High Court and also the order dated 11.09.2019 passed by the Hon'ble Apex Court in Special Leave to Appeal No. 21120/2019 granted liberty to the applicant to redress its grievances before appropriate forum. Thereafter, the applicant served notices dated 31.01.2020 and 13.03.2020 upon respondent for appointment of arbitrator but the non-adjudication of the same led to the filing of present application.
5. It is submitted by learned counsel for applicant that the matter to be referred to the State Arbitration Tribunal has to be strictly a work

contract. A consultancy contract between applicant and respondent is not a works contract. On the contrary, it is a consultancy services contract, therefore, the applicant is left with no other option but to approach this Court praying for appointment of arbitrator. Reliance has been placed on the judgment of Bombay High Court in Mrs. Henriqueta Maria Julieta Vs. State of Goa and others in 2008 Law Suit (Bom) 3264.

6. Learned counsel for respondent submits that “works contract” defined in Section 2(i) of CG Madhyastham Adhikaran Adhiniyam, 1983 (for short ‘Adhiniyam, 1983’) includes the contract, that is in existence between applicant and respondent and any dispute regarding to such contract will have to be referred to the Arbitration Tribunal, therefore, present dispute is referable to State Arbitration Tribunal. Reliance is placed on the judgment of M.P. High Court passed in Landmark Engineering Vs. The State of M.P. and others, Arbitration Case No.12/2014 decided on 21.04.2015, in which, it was held that it is trite law that statutory provision would prevail over provisions of agreement. Therefore, contention of the petitioner that since agreement contains an arbitration clause under the provisions of the Act of 1996, cannot be accepted.
7. It is also submitted before this Court that work under the contract was of consultancy only and not for any work as defined under Section 2(i) of Adhiniyam, 1983, therefore, it is prayed that petition be allowed.
8. I have heard both the parties and documents submitted in this respect.

9. The arbitration clause under special conditions of contract, which governs the contract between the parties, reads as under:-

“Any dispute or difference arising out of this Contract or in connection therein which cannot be amicably settled between the parties shall be finally settled under the Rules of Indian Arbitration and Conciliation Act, 1996.”

10. The time based contract agreement, mentions very clearly that the respondent i.e. Public Works Department, shall be referred to as 'client' and applicant, who is also a party, will be referred to as 'consultant'. In Clause-A it is very clearly mentioned that client has requested the consultant to provide consultation services as defined in this contract (hereinafter called as services).

11. Section 2(i) of C.G. Madhyastham Adhikaran Adhiniyam, 1983 is asunder :-

"works-contract" means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works."

12. Section 3 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 is as under:-

“ Constitution of Tribunal. - The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising

out of or connected with execution, discharge or satisfaction of any such works contract.”

13. Now the question that arises for consideration is whether providing services of consultation can be regarded as a contract in connection with execution or discharge satisfaction of any work contract. The question can be answered very simply because there is no such averment made on the part of the respondent that respondent has any grievance with respect to execution, discharge or satisfaction of contract which applicant had to provide was consultation services. Dispute between applicant and respondent is very clear that there had been an agreement between both the parties that the entire service tax that would be paid by applicant, will be reimbursed by the respondent, therefore, it appears to be a case of breach of agreement between applicant and respondent. There is no specific denial by the respondent regarding this agreement.
14. After due consideration on over all facts and circumstances of case and documents present on record, I am of this view that nature of the contract between applicant and respondent is not a contract as defined under Section 2(i) of Adhinyam, 1983 and as such, it is not a work contract, rather it is a service contract. Hence, on the basis of this finding, it is held that this dispute shall not be governed by the provisions of Adhinyam, 1983. Hence, the application brought before this Court has merits and, further, this Court has jurisdiction and power to invoke section 11(6) of Arbitration and Conciliation Act, 1996.
15. Therefore, on the basis of above discussions, this court reaches to the conclusion, that it is fit case for exercise of power under Section 11(6) of the Act, 1996. Therefore, by exercising power

under Section 11(6) of the Act, 1996 and under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Shri Justice L.C. Bhadoo, former Judge of this High Court as Arbitrator to arbitrate dispute between the parties. Registry is directed to communicate this order to Hon'ble Shri L.C. Bhadoo who shall enter into reference after complying with the provisions contained in Section 12(2) of the Act, 1996. Learned arbitrator is requested to dispose off the matter within the time prescribed in the Act, 1996, as amended.

16. The remuneration of the Arbitrator shall be mutually settled by the parties.

17. The ARBR is disposed off with the aforesaid directions.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai