

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBR No. 24 of 2019

Mayur Parivahan Through Radhe Shyam Sharma, S/o Late Ramgopal Sharma, Aged About 57 Years, Handling And Transportation Contractor, Authorized Transporter Of C.G. S.C. S.C. (N.A.N.) Public Distribution System (P.D.S.), Long Route Transport(L.R.T.), R/o Near Marwadi Kunwa, Sanjay Ward, Bhatapara, District- Balodabazar- Bhatapara, Chhattisgarh.

---- Applicant

Versus

1. The Managing Director, Central Ware Housing Corporation, Ware Housing Bhawan 4/1 SIRI Institutional Area, August Kranti Marg Hauz Khas, New Delhi, Pin- 110016.
2. The Regional Manager, Central Ware Housing Corporation Ware Housing Complex, Near Harish Petrol Pump, Rawabhatha, Post- Birgaon, Raipur, District- Raipur, Chhattisgarh.Pin- 493221
3. The Manager Central Ware Housing Corporation- 2 Bhatapara, District- Balodabazar- Bhatapara, Chhattisgarh.

---- Respondents

For applicant – Shri Sudhir Verma, Advocate.

For respondents – Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

07/04/2021

Heard.

1. Instant petition has been filed to appoint an arbitrator pursuant to agreement entered by the petitioner with the respondent. According to the petitioner, the petitioner entered into a contract in between period 20/03/2015 to 19/03/2017 by Annexure A-4. The agreement was to remain in force for two years and the agreement period was extended further on 18/03/2017 whereby the period was extended up till 19/06/2017. The said extension was made on 18/03/2017. According to the E-Tender document all disputes and differences arising out of or in any way touching the concerning agreement was required to be referred to the sole arbitration of any person appointed by the Managing Director of Central Warehousing Corporation, New Delhi. It contains a proviso clause that provided further any demand of arbitration in respect of any claim would be required to be in

writing within one year of the date of termination of the completion of agreement. According to the petitioner an application was filed on 18/06/2018 for appointment of arbitrator, however the same was not done. Consequently, the present petition.

2. Learned counsel for the petitioner would submit that initially the date of agreement was for a period of 20/03/2015 to 19/03/2017 which was further extended on 20/03/2017 for three months which would expire on 19/06/2017 and before expiry of the period the petitioner has moved an application for appointment of arbitrator on 18/06/2018, therefore the arbitrator may be appointed to adjudicate the issue.

3. Per contra, learned counsel for the respondent would submit that the food corporation would be a necessary party in this case as the dispute which is raised the food corporation would be required to place their stand so that the issue can be adjudicated and since the food corporation has not been made a party this petition is not maintainable. He would submit that since the dispute touches about the payment clause 19 and 20 of the agreement, as such unless and until the food corporation is made a party the issue cannot be decided as the issue is under consideration before the FCI.

4. Heard learned counsel for the parties.

5. The period of agreement from 20/03/2015 which was extended up till 19/06/2017 is not in dispute. The tender clause to which the parties have agreed contains a arbitration clause which initially provide that all disputes and differences arising out of or in any way touching the concerning agreement would be decided by the arbitrator who would be appointed by the Managing Director of Central Warehousing Corporation, New Delhi. It also contains a proviso clause that demand of arbitration in respect of any claim of the contractor under the contract shall be in writing and be made within one year of the date of termination or completion of the period of the contract. Here the period of extended contract was up till 19/06/2017.

6. Annexure A/1 would show that the petitioner demanded for appointment of

arbitrator by a letter dated 18/06/2018 which has an endorsement of the receipt. Since the Managing Director appears to have failed to appoint any arbitrator as such as per the proviso clause of the arbitration, the petitioner has requested for appointment of arbitrator. The submission which has been made by the respondent that FCI would be a necessary party is not an issue to be decided for appointment of arbitrator. It is for the arbitrator to take a decision on it. The agreement was in between the petitioner and the Warehousing Corporation as such for appointment of the arbitrator the said submission of the respondent cannot be appreciated that in absence of FCI in the instant petition the arbitrator cannot be appointed. The series of events would show that before expiry of one year the prayer to appoint the arbitrator was exercised. Consequently, both the parties would be governed by the terms of contract. Therefore, in the considered opinion of this Court the arbitrator is to be appointed to adjudicate the lis in between the parties. Accordingly, Hon'ble Justice Shri V.K. Shrivastava may be appointed as an arbitrator to arbitrate in the proceeding in accordance with the provisions of the act. The Hon'ble Justice may be informed accordingly.

7. Accordingly, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE