

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No. 5 of 2022

Ananta Multi Solution Pvt. Ltd. ***Petitioner***

Mr. S.S. Padhy, Advocate

-versus-

Omsfree Infratech Pvt. Ltd. ***Opposite Party***

Mr. Lalit Kumar Moharana, Advocate

**CORAM:
THE CHIEF JUSTICE**

**ORDER
05.08.2022**

Order No.

03. 1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') seeks the appointment of an Arbitrator to adjudicate the disputes between the Petitioner and the Opposite Party arising out of an agreement dated 7th December, 2020 for the purpose of carrying out the construction work.
2. There are two objections raised by the Opposite Party to the appointment of an Arbitrator. The first objection is that the arbitration clause is not binding on the parties because of its wording. The clause of the agreement in question reads as under:

“23. Arbitration. In case of disputes arising between the parties, the matter may be referred to arbitration in pursuance to the provisions of the Arbitration and Conciliation Act, 1996”

3. Relying on the judgments in *Jagdish Chander v. Ramesh Chander* (2007) 5 SCC 719 and *Ramesh Chandra Samantaray v. Executive Engineer, Rural Works Division 2014 (I) ILR CUT 1039* learned counsel for the Opposite Party contends that just as in those decisions, the Court should decline to appoint an Arbitrator on the basis of the above clause.

4. The Court finds that as far as *Jagdish Chander v. Ramesh Chander* (*supra*) is concerned, the clause in question in that case read as under:

“2. xx xx xx

(16) If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or *shall be referred for arbitration if the parties so determine.*”

5. In the present case, as already noticed the clause is very different and the reference to arbitration is not made conditional on the parties again having to agree separately for arbitration. As far as *Ramesh Chandra Samantaray* (*supra*) is concerned, the relevant clause read as under:

“25.1 In view of the provision of the Clause 24 on Dispute Redressal System, it is the condition of the Contract that there will be no arbitration for the settlement of any dispute between the parties.”

6. The above clause is again very different from the clause in the present case, which is quite clear that the parties have agreed to have their disputes settled by arbitration under the Arbitration and

Conciliation Act, 1996. Consequently, the Court negatives the first objection.

7. The second objection is that the notice issued by the Petitioner to the Opposite Party seeking the appointment of an Arbitrator is actually a criminal complaint. Here again the Court is unable to agree. The operative portion of the notice asks the Opposite Party to agree to appoint an Arbitrator in terms of the above arbitration clause in the agreement between them.

8. Consequently, the Court finds no merits in the objections of learned counsel for the Opposite Party.

9. Without expressing any view on the merits of the respective contentions of the parties, the Court appoints ***Shri Saurjya Kanta Padhi, Senior Advocate*** as the sole Arbitrator to adjudicate the disputes between the parties. The arbitration shall take place under the aegis of the High Court of Orissa, Arbitration Centre.

10. The arbitration petition is disposed of accordingly. A copy of this order be communicated to the learned Arbitrator forthwith.

11. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice