

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No. 74 of 2021

M/s. H R Constructions Pvt. Ltd. **Petitioner**

Mr. A. Satpathy, Advocate

-versus-

Managing Director, Bhubaneswar, **Opposite Party**
M/s. Steel Authority of India Ltd.

Mr. Goutam Mishra, Senior Advocate

CORAM:
THE CHIEF JUSTICE

ORDER

24.06.2022

Order No.

04. 1. The plea by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator arises out of a works agreement dated 28th July, 2010 entered into between the parties. The work was for modification of a dumping platform for plying of 120T dumpers at Bolani ore mines. Admittedly, Clause 14 of the said works agreement provides for arbitration between the parties.
2. A serious objection is raised to the maintainability of the present application by the Opposite Party on the ground of limitation. It appears that a request was made for release of payment of Bill No.18 for Rs.50,51,365/- on 13th March, 2013 followed by another request on 6th November, 2013. It is accordingly submitted that more than three years have elapsed since that date and the notice for arbitration was issued only on 16th April 2021, which is plainly time-barred. Reliance is placed on the decision of the Supreme Court of India in *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited (2020) 14 SCC 643*. Mr. Goutam Mishra, learned Senior Advocate for the

Opposite Party insists that events subsequent to the submission of final bill will have no bearing on the fact that the claim already stands time-barred.

3. Mr. A. Satpathy, learned counsel for the Petitioner, on the other hand, has handed over a date chart which suggests that on 15th December 2017, the Opposite Party made a payment of Rs.20,37,388/- to the Petitioner by way of a bank transfer. According to the Petitioner, the parties also sat down thereafter for negotiations. He refers to the minutes of the meeting of 23rd February, 2021. It is submitted after those negotiations failed, the Petitioner issued the arbitration notice dated 16th April 2021. It is submitted that on 8th May 2021, the Opposite Party requested for appointment of a Conciliator to which the Petitioner agreed on 4th August, 2021. However, on 23rd August 2021, the Opposite Party rejected the request for appointment of a Conciliator.

4. Although it is urged by Mr. Goutam Mishra, learned Senior Advocate for the Opposite Party that in the present case, the claims appeared to be ex facie time barred, this Court is unable to agree with the said submission. It appears arguable whether in fact the claims were time barred when the Opposite Party on its own made payment of a substantial sum to the Petitioner on 15th December 2017, although this was beyond three years from the date of the final bill. Again, the fact that the parties sat down to negotiate on 23rd February 2021 is unable to be denied by the Opposite Party. Both these events appear to indicate to the Court that the contention of the Opposite Party that the claims are ex facie time barred cannot be straightway accepted. It appears to be an arguable issue.

5. In that view of the matter, leaving the issue of the limitation to be also decided by the Arbitrator, the Court appoints ***Sri K.N. Panigrahi***, a former District Judge as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter claims and the aforementioned issue of limitation. The arbitration shall take place under the aegis of the High Court of Orissa Arbitration Centre. The Arbitrator will not be influenced by any of the observations made by this Court in the present order.

6. The arbitration petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator forthwith.

S. Behera

