

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arb. Application No.17 of 2024

M/s Sahil Projects & Planning Pvt. Ltd., a private limited company incorporated under the Companies Act, 1956, having its official address at Jora Talab, Bariatu, P.O. & P.S. – Bariatu, Ranchi, Jharkhand – 834009 through its authorized Representative Mr. Chitransh Ravichandra, son of Ashok Kumar Sinha, aged about 36 years, resident of Kuju Colliery, P.O. 7 P.S.- Kuju, District- Ramgarh, Jharkhand, 825316.

... Petitioner

Versus

1. South Eastern Railway, through its General Manager, having its official address at 11, Garden Reach Road, P.O. & P.S. – Garden Reach, District – Kolkata, West Bengal – 700043.
2. General Manager, South Eastern Railway, having its official address at 11, Garden Reach Road, P.O. & P.S. – Garden Reach, District – Kolkata, West Bengal – 700043.
3. Deputy Chief Engineer (Con) Ranchi, South Eastern Railway, having its official address at South Eastern Railway (Ranchi Division), P.O. & P.S. – Chutia, Ranchi, Jharkhand-83401.

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Petitioner: Mr. Shresth Gautam, Advocate
For the Respondents: Mr. Anil Kumar, Addl. S.G.I.
Mr. Abhijeet Kumar Singh, C.G.C.

05/Dated: 20.12.2024

1) This application has been filed seeking appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes between the parties arising out of contract agreement dt. 14.10.2020. The agreement contains Clause No.64 of GCC, an arbitration clause, and the petitioner had issued a notice (Annexure 25) dt. 28.03.2024 invoking the arbitration clause.

2) In the counter affidavit filed by the respondents, it is stated at paragraph 13 that in response to the petitioner's legal notice, the General Manager of the South Eastern Railway had requested the petitioner to furnish waiver under Section 12(5) and Section 31-A(5) of the Arbitration and Conciliation (Amendment) Act through letters dt. 01.04.2024,

23.04.2024, 22.05.2023 and again on 10.06.2024 and without doing the said act of waiver, this application has been filed in this Court.

3) I am afraid that the stand taken by the respondents is wholly untenable, as, the respondents cannot compel the petitioner to agree to an arbitrator of their choice who happens to be a retired Officer of the Railways. As per paragraph 31 of the Fifth Schedule, the Arbitrator cannot be a person who has been associated with one of the parties in a professional capacity, such as a former employee or partner.

4) In this view of the matter, this application is allowed by rejecting the objection of the respondents to the appointment of the Arbitrator sought by the petitioner. Accordingly, Justice N. N. Tiwari, Former Judge of this High Court, is appointed as an Arbitrator to adjudicate the disputes between the parties.

5) Learned Arbitrator would be free to lay down fees and other expenses towards conduct of the arbitration proceedings, however, keeping into account the ceiling prescribed under Schedule IV of the Act of 1996 as amended.

6) Learned Arbitrator would endeavor to conclude the proceedings expeditiously, also taking into regard the mandate of the Legislature under Section 29-A of the Act of 1996.

7) The Registry is directed to intimate the learned Arbitrator so appointed to take up the arbitration proceeding and send photocopy of the entire pleadings along with copy of the entire order sheets to the learned Arbitrator.

(M.S. Ramachandra Rao, C.J.)