

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Arbitration Application No. 12 of 2023**

Pandey Brothers, a sole proprietor firm at Ghurni Joria, Katras Road, Matkuria, Dhanbad through its Proprietor Sri Ashwini Kumar Pandey, S/o Sri Kamaldutt Pandey, aged about 67 years, R/o: Surya Vihar Colony Gali no.3, Bartar, II Floor, P.O+District: Dhanbad, State: Jharkhand.

**... Petitioner**

Versus

1. East Central Railway, Dhanbad through Sr. Divisional Engineer (3), P.O, P.S and District: Dhanbad

2. General Manager, East Central, Hajipur, P.O & P.S and District: Hajipur.

**... Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE**

For the Petitioner

: Mr. Sachin Kumar, Advocate

For the Resp.-UOI

: Mr. Anil Kumar, ASGI

Mr. Abhijeet Kr. Singh, AC to ASGI

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**Order No. 5/Dated: 21<sup>st</sup> June 2024**

This Arbitration Application has been filed by Pandey Brothers seeking appointment of an Arbitrator under section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, AC Act).

2. Raising a grievance that the East Central Railway failed to make payment of Rs. 1,77,90,621.19/- for the work executed under the agreement dated 13<sup>th</sup> May 2016, the applicant-Firm has moved this Court. The applicant-Firm pleads that pursuant to a Tender Notice dated 16<sup>th</sup> March 2015 for executing altogether five works of “strengthening of bridges on dedicated freight corridor feeder routes Br. No. 23 (1X6. 10 M Slab) between BHKD–PTRU at KM 113/09-10 & Br. No. 32 (2X12 + 2X 18.3M (Girder) between PTRU-BHKD at KM 118/11-12”, the work at serial no. 5 in the said Tender Notice was allotted to the applicant-Firm, the total value of which was Rs.1,44,76,100/-. An agreement was executed on 13<sup>th</sup> May 2016 and the work under the agreement was to be completed within six calendar months, that is, by 14<sup>th</sup> August 2016. According to the applicant-Firm, extra works were assigned to it and that too beyond the sanctioned drawings and there were other reasons why the work under the agreement could be completed in October 2019. The

applicant-Firm has further pleaded that even after preparing a bill for Rs.1,88,72,809.92/- for the actual work done by it on-account bill was prepared only for Rs.94,64,763.56/- and, in connection therewith, it wrote several letters including a letter dated 21<sup>st</sup> August 2022.

3. Mr. Sachin Kumar, the learned counsel appearing for the applicant-Firm states that though the East Central Railway through its letter dated 10<sup>th</sup> January 2023 asked the applicant-Firm to choose two Arbitrators from the list of proposed four names, in view of the law laid down by the Hon'ble Supreme Court the applicant-Firm expressed its disinclination through advocate's notice dated 1<sup>st</sup> March 2023 and suggested the name of three advocates to the respondents for selecting an Arbitrator. According to the learned counsel for the applicant-Firm, as the parties did not arrive at a consensus on a mutually agreed name of the Arbitrator, the applicant-Firm was constrained to approach this Court on 19<sup>th</sup> May 2023 by filing the present Arbitration Application.

4. A counter-affidavit has been filed by the respondent no.1-East Central Railway, Dhanbad through Sr. Divisional Engineer (3) taking an objection to maintainability of the present Arbitration Application. The relevant paragraphs of the counter-affidavit are extracted below:

8. That it is further stated that the applicant has not completed the work within time stipulated in the contract. Further, No satisfactory reasons/explanation has been assigned and on this ground also the present application is not maintainable.

9. That it is further stated that as per the term of agreement the name of the arbitrator has already been given to the applicant and he failed to select any of them as arbitrator. As the applicant himself failed to act as per the terms of the agreement the present application is liable to be dismissed.

10. That it is further stated that the applicant in the instant case has initiated the process of appointment of an arbitrator after the lapse of 3 years from the date of cause of action therefore the same is barred by limitation.

5. In the opinion of this Court, the dispute raised by the applicant-Firm is arbitrable and given the facts of the case the issue of limitation cannot be decided at this stage. In view of the judgment in "*N.N Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*" (2023) 7 SCC 1, while examining the application under section 11(6) of the AC Act all that the Court is required to look into is the existence of an arbitration clause.

6. This Court therefore requests Mr. S. K. Satapathy, a former

Principal Secretary to Governor, State of Jharkhand to act as an Arbitrator. The learned Arbitrator may enter reference within 30 days of the communication of this order. As agreed between the parties, the fee of the learned Arbitrator shall be as per Fourth Schedule to the AC Act. This is also indicated that seat of the arbitration shall be at Ranchi and the learned Arbitrator shall be at liberty to change the venue for arbitration with the consent of the parties, who shall provide all necessary logistics if so desired by him.

7. Arbitration Application No.12 of 2023 is allowed.

**(Shree Chandrashekhar, A.C.J.)**

*R.K./Vedanti*