

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 14 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+P.S+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

Order No. 5/Dated: 21st 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. In this Arbitration Application, the applicant-Firm has pleaded that an agreement was executed on 12th November 2013 for executing the work at serial no.1 in the Tender Notice dated 4th October 2012, the total value of which was Rs.1,45,57,450/-. According to the applicant-Firm, the rate offered by it was accepted with final variation at Rs.1,73,94,397/- and the work was completed in April 2016, about two years after the scheduled completion period. The applicant-Firm raised host of grievances including non-supply of material, payment not made in time and manipulation in the measurement book by the officer of the East Central Railway. The applicant-Firm has further pleaded that in spite of carrying out several changes, additions and modifications in the work order it was not paid Rs.1,08,25,293/- for which it made several representations and made a final call through letter dated 9th July 2022 but the dispute could not be resolved. Constrained, the applicant-Firm has approached this Court seeking appointment of an Arbitrator under section 11(6) of the AC Act. But before that, in response to the

letter dated 9th July 2022 of the applicant-Firm, the respondents had proposed four names to it for suggesting two names of the Arbitrators. According to the learned counsel for the applicant-Firm, this offer was not accepted by the applicant-Firm for the reason that section 12(5) of the AC Act prohibits any person to appoint an Arbitrator who was involved directly or indirectly with the interest of the said person.

3. Mr. Sachin Kumar, the learned counsel for the applicant-Firm has drawn attention of this Court to the letter dated 29th March 2023 by which the applicant-Firm has suggested name of three advocates to the respondents for appointment of 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 19th 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 arbitration clause.

6. This Court therefore appoints Mr. Vineet Kumar Vashistha, the learned Special Public Prosecutor and a practicing advocate 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.14 of 2023 is allowed.

(Shree Chandrashekhar, A.C.J.)

R.K./Vedanti