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HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 41 of 2024

M/s Veda Enterprises Through Partner Mr. Ashutosh Shukla S/o Chandrahas Shukla, Aged 35 Years, R/o Sai-Sadan, Near Shitla Mandir, Rajendra Nagar, District-Bilaspur, Chhattisgarh., Chhattisgarh

... Applicant

versus

- 1 - South East Central Railway Through- Sr. Divisional Commercial Manager (Co-Ord), Bilaspur Zone, District- Bilaspur, Chhattisgarh.
- 2 - Principal Chief Commercial Manager, South East Central Railway Bilaspur Zone, New Zonal Building, Ground Floor, Railway Colony, District- Bilaspur, Chhattisgarh.
- 3 - Assistant Commercial Manager South East Central Railway Bilaspur Zone, District-Bilaspur, Chhattisgarh.

... Non-applicants

For Applicant	:	Mr. Siddharth Shukla, Advocate.
For non-applicants	:	Mr. Ramakant Mishra, Deputy Solicitor General.

Hon’ble Mr. Ramesh Sinha, Chief Justice

Order on Board

08.01.2025

- 1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The applicant has prayed for the following relief(s):

“i. To Appoint Sole Arbitrator for resolving the disputes raised between the parties herein in terms of Clause 28 of the Tender Document.

ii. Pass any other relief/order or direction, as this Hon’ble Court deems fit and proper looking to the facts and circumstance of the case and in the interest of justice.”

3. The facts, in brief, as projected by the applicant are that the non-applicant No. 1 had floated Commercial Publicity tender for display of advertisement at entire circulating area of various railway stations and railway area (ROB/RUB, LC Gates, LHS, Railway Colony) of Section-II (Gatora – Gevra Road), location over Bilaspur division for a period of Ten (10) years on 27th June 2018. The applicant was declared as successful bidder in the afore-stated Tender and Letter of Acceptance dated 9th January 2019 was issued by non-applicant No.3. It is submitted that the applicant vide Letter dated 25th January 2019 had submitted Bank Guarantee for an amount of Rs.8,72,560/- as Security Deposit for the aforesaid Tender. It is pertinent to note that Clause 12 of the Tender Document and Clause 2 of the Letter of Acceptance provided the timeline for achieving the milestones and respective payments. It is further submitted that applicant had been requesting the non-applicants for providing the blue-prints. It is submitted the applicant was continuously facing problem that the earlier advertising agency

were not vacating the space for putting up the advertisement due to which the Advertisement plan could not be prepared and at the same time, non-applicants were not co-operating in providing the blue-print or demarcating the advertisement board owned by the Railways so that Advertisement Plan can be prepared.

4. Mr. Siddharth Shukla, learned counsel for the applicant has submitted that all throughout non-applicants were demanding the License Fees without approving the Advertisement Plan and thereafter issued Demand Notices which was duly replied by the applicant. Thereafter, non-applicant No. 1 had issued the Termination Notice dated 28th October 2019 in respect of Tender for Section-II whereby the Letter of Acceptance dated 9th January 2019 was terminated and Security Deposit was forfeited. It is submitted that applicant had issued the Arbitration Notice dated 16th November 2019 to the non-applicants for appointment of Arbitrator under Clause 28 of Tender, but the issue Security Deposit was forfeited. It is submitted that applicant had issued the Arbitration Notice dated 16th November 2019 to the non-applicants for pertaining to Termination and forfeiture of Security Deposit was not referred in the Arbitration Notice since it was issued prior to Termination Notice. The non-applicants vide Letter dated 8th March 2022 had appointed Mr. Ajay Kumar Verma, Retired General Manager/SER as Arbitrator in violation of Section 12(5) of Arbitration and Conciliation Act, 1996 in respect of Section-I only.

5. Mr. Shukla further submitted that the applicant had again sent an Arbitration Notice dated 4th February 2024 under Clause 28 of the Tender and Section 21 of the Arbitration and Conciliation Act, 1996 for Appointment of Retired High Court Judge or District Judge as Sole Arbitrator for resolution of disputes pertaining to the termination, forfeiture of security deposit and non-refund of license fees. It is apposite to note that Petitioner had not given consent for waiver of Section 12(5) to the non-applicants. It is further submitted that non-applicant vide Letter dated 19th April 2024 had rejected the request of Petitioner for appointment of Retired High Court Judge or Retired District Judge as Sole Arbitrator for resolution of disputes but they had not rejected the fact that dispute have arisen between the parties which need to be adjudicated in the Arbitral Proceedings. It is submitted that non-applicants had failed to appoint the Arbitrator.
6. Clause 28 of the Tender provides for Arbitration wherein all disputes, questions or differences arising out of or in any way touching or concerning this agreement shall be referred to the sole arbitration of any person appointed by the General Manager, South East Central Railway at the time of such appointment. The demand for arbitration shall specify the matters which are in question or subject of the dispute or difference as also the amount of claim item-wise. It is further submitted that only such disputes or difference, in respect of which the demand has been made,

together with counter claims or set off, given by the Railways, shall be referred to arbitration and other matters shall not be included in the reference. The parties may waive off the applicability of sub-section 12 (5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver, in writing, after dispute having arisen between them, in the format given in the Arbitration Act. The Arbitral tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM. The entire mechanism provided under Clause 28 of Tender does not stipulates that in case of failure of parties to waive of the Section 12(5) of the Arbitration and Conciliation Act, 1996 than non-applicants will have liberty to appoint the Arbitrator of their choice considering the Petitioner's deemed consent towards the waiver of Section 12 (5). It is submitted that in absence of consent to waive of Section 12 (5) from the Petitioner, Section 12 (5) read with Clause 1 of Seventh Schedule of the Arbitration and Conciliation Act, 1996 is duly applicable over the present matter disqualifying the Former Railway Employee to act as an Arbitrator from proceeding in the matter and that too appointed by the Employee of the non-applicants. The present Claim is well-within the limitation period since the Termination Notice was issued on 11th December 2019 since then cause of action has arisen which is not

refuted by the non-applicants in their Reply dated 19th April 2024. Further period from 15th March 2020 to 28th February 2022 stands excluded for computation of the limitation considering Order dated 10th January 2022 passed in SMWP No. 03/2020 i.e. IN RE: Cognizance for Extension of Limitation wherein Hon'ble Supreme Court had directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial Proceedings. It was further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

7. Mr. Ramankant Mishra, learned counsel appearing for the non-applicant relying on the return filed on behalf of non-applicants, opposes this application, however, he submits that the non-applicants will have no objection if any Arbitrator is appointed by this Hon'ble Court for resolving the dispute that has arisen between the parties.

8. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
9. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice V.K. Shrivastava, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.
10. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Justice V.K. Shrivastava** a retired Judge of this High Court is appointed to act as the Sole Arbitrator to resolve the dispute involved in this arbitration request between the parties.
11. The Registry is directed to communicate this order to Hon'ble Mr. Justice V.K. Shrivastava in the proper address.
12. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
13. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
Chief Justice