



2025:CGHC:7313

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 44 of 2024

- Sherisha Rooftop Solar SPV Four Private Limited, A Company Incorporated Under The Companies Act, 2013 Through Its Authorized Signatory Mr. Sridhar Muruganandam, Having Its Corporate Office At 67, Bazullah Rd. T Nagar, Chennai, Tamil Nadu – 600 017 and Registered Office At New No. 1/171 Old No. 1/122, Old Mahabalipuram Road Thandalum Village, Thiruporur Kancheepuram, Chennai Tamil Nadu - 603110.

... Applicant

versus

- South East Central Railway Through its General Manager, Office of General Manager, Bilaspur District - Bilaspur Chhattisgarh- 495004
- Senior Divisional Electrical Engineer (TRD), SECR Raipur Division, DRM Office, NH - 200, Raipur, Chhattisgarh - 492014.

... Respondent

PREETI
KUMARI
Digitally signed
by PREETI
KUMARI
Date:
2025.02.13
11:17:50 +0530

For Applicant : Mr. Vaibhav Shukla, Advocate.

For Respondent : Mr. Ramakant Mishra, Dy. Solicitor Genera.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Order on Board

10.02.2025

- This is an application under Sections 11 (4) and 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
- The applicant has prayed for the following relief(s):

“ i. Accept and allow this application for the appointment of an independent and impartial sole arbitrator, or, in the alternative, appoint a panel of three arbitrators by confirming the Applicant's nominee i.e., Justice Alok Sharma and appointing the remaining arbitrators in accordance with Section 11 of the Arbitration and Conciliation Act, 1996, read with Clause 33.3 of the Power Purchase Agreement dated 13.12.2019, to adjudicate upon the claims of the Applicant under the said Agreement in the interest of justice;

ii. Direct the Non-Applicant No. 1 to pay the costs of these proceedings; and

iii. To pass such other or further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the applicant and thus render justice..”

3. The facts, in brief, as projected by the applicant are that the applicant, a Solar Power Company, entered into a Power Purchase Agreement (PPA) with the South Eastern Central Railways, a zone of Indian Railways ("respondent No. 1"), to develop a 50MW (AC) solar power plant at Bhilai, Chhattisgarh on a Design, Build, Finance, Operate, and Transfer (DBFOT) basis. The respondent No. 2 is the Senior Divisional Electrical Engineer of the Raipur Division of respondent No. 1 and was the nodal agency appointed for the supervision and execution of the project which is under dispute in the present application. The execution of this project was fraught with challenges, including delays in land confirmation, removal of encroachments, and the necessity for multiple approvals from the respondents. These issues were compounded by the COVID-19 lockdowns and changes to the Goods and Services Tax (GST) rates applicable to solar components, which significantly increased project.
4. Mr. Vaibhav Shukla, learned counsel for the applicant submits that despite the applicant's diligent efforts to meet the contractual obligations, the

respondents delays and changing requirements resulted in a substantial hindrance to project completion. The situation escalated, leading to the commissioning of the solar power plant only on 22.04.2023, well beyond the originally anticipated timeline. Furthermore, ongoing negotiations regarding various claims and adjustments for delays were largely unaddressed, leading to an untenable situation for the applicant. Serious disputes began to surface, as highlighted in letters dated 14.06.2024 and accompanying documents, which illustrate the applicant's concerns regarding the respondents intransigence in acknowledging its legitimate claims. Despite clear contractual and legal obligations, the respondent No. 1 refused to engage with the applicant, leaving no option but to initiate arbitration proceedings in accordance with Article 33.3 of the PPA. On 27.06.2024, the applicant formally issued a notice invoking arbitration, detailing its preliminary claims and nominating Justice Alok Sharma, a retired judge of the High Court of Rajasthan, as its arbitrator. Regrettably, the respondent No. 1 failed to take any action toward the constitution of the Arbitral Tribunal as required by Article 33.3 of the PPA. The respondent No.1 did not acknowledge Justice Alok Sharma's nomination as the applicant's arbitrator. Instead, in a move viewed as an afterthought, the respondent No. 1 issued a letter dated 18.07.2024, raising frivolous objections regarding the formalities of the notice, such as the use of an alleged incorrect letterhead, address, and subject line. These objections were entirely without merit and did not affect the legal validity of the Notice. In response to respondent No. 1 baseless allegations, the applicant issued a reply letter dated 29.07.2024, categorically refuting the claims made by the respondent No. 1.

5. Mr. Shukla also submits that the applicant emphasized that the Notice Invoking Arbitration was duly issued and legally sound, reiterating that the respondent No. 1 objections were unfounded both factually and legally. The

applicant urged that the arbitration process should proceed without further delays. Despite the clarity of the applicant's position, the respondent No. 1 continued to undermine the arbitration process. On 30.08.2024, respondent No. 1 issued yet another letter attempting to shift responsibility to REMCL, despite no such obligation existing under the PPA. This action reflects a clear attempt to obstruct the arbitration process. The respondent No. 1 persistent delays and lack of cooperation in constituting the Arbitral Tribunal further undermine the arbitration proceedings. Through this dilatory conduct, the respondent No. 1 has effectively acquiesced and forfeited to its right to participate in the arbitration process, thereby indicating a clear disregard for the arbitration agreement. In light of these developments, the applicant is compelled to approach this Hon'ble Court under Sections 11 (4) and 11 (6) of the Arbitration and Conciliation Act, 1996, to seek a reference of disputes to arbitration. Article 33.3 of the PPA, which encapsulates the arbitration agreement and the mutual intention of the parties to arbitrate, is included herein for ease of reference. The applicant respectfully submits that the ongoing disputes necessitate judicial intervention to facilitate the constitution of the Arbitral Tribunal, allowing for the resolution of claims and ensuring that the applicant's legitimate rights are safeguarded.

6. Mr. Ramakant Mishra, learned counsel appearing for the respondents relying on the counter-affidavit on behalf of respondents, opposes this arbitration request application, however, he submits that the respondent will have no objection if any Arbitrator is appointed by this Hon'ble Court for resolving the dispute that has arisen between the parties.
7. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
8. 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 Satish K. Agnihotri, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.

9. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Justice Satish K. Agnihotri** 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.
10. The Registry is directed to communicate this order to Hon'ble Mr. Justice Satish K. Agnihotri in the proper address.
11. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
12. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE