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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 19th OF JUNE, 2023
ARBITRATION CASE No. 27 of 2022**

BETWEEN:-

**M/S C.S. CONSTRUCTION THROUGH ITS POWER AGENT
SHRI ASHISH SHARMA S/O SHRI RAMESH SHARMA,
AGED ABOUT 33 YEARS, HAVING ITS OFFICE AT K-21,
BHARAT NAGAR AMRAWATI ROAD, NAGPUR R/O AT
BHADHAVGARH COLONY, SATNA (MADHYA
PRADESH).**

.....APPLICANT

(BY SHRI AMIT KUMAR SINGH - ADVOCATE)

AND

- 1. UNION OF INDIA THROUGH GENERAL MANGER
WEST CENTRAL RAILWAY, JABALPUR (MADHYA
PRADESH).**
- 2. DEPUTY CHIEF ENGINEER (CONSTRUCTION)
WEST CENTRAL RAILWAY JABALPUR (MADHYA
PRADESH).**

.....RESPONDENTS

(BY SHRI C.M. TIWARI - ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

Applicant has filed this application under Sections 11(4), 11 (5) and 11(6) of Arbitration and Conciliation Act, 1996, for appointment of Arbitrator.

2. Counsel for applicant submitted that there is Arbitration Agreement contained in Clause 4.73 and 4.75 of Construction Agreement dated 26.10.2016. Counsel appearing for applicant pointed out to Clause 63 and 64 of

Indian Railway's General Conditions of Contract, 1999 and amended General Conditions of Contract upto 26.10.2026. It is submitted that applicant made representation for appointment of Arbitrator on 27.10.2021. As per Clause 63 of Indian Railway's General Conditions of Contract, 1999, decision is to be taken within 120 days and non-applicants failed to take decision and to appoint Arbitrator. In view of same, prayer is made for appointment of Arbitrator.

3. Counsel appearing for non-applicants submitted that delay has been caused in execution of the contract work by applicant. Notices were given to applicant but they failed to accelerate the progress of work. 5 extensions were granted to applicant, but, when applicant could not show result, non-applicants were left with no other option but to terminate the contract under Section 62 of General Conditions of Contract. It is further submitted that matter comes within purview of excepted matters as per Clause 4.74, therefore, Section 11 of the Arbitration and Conciliation Act cannot be invoked. In view of same, counsel appearing for non-applicants prays for dismissal of application filed for appointment of Arbitrator.

4. Heard the counsel for the parties.

5. In another matter i.e. Arbitration Case No. 28/2022 between a private contractor and Railways, similar defence of excepted matter was taken. Court vide its order dated 26.04.2023 in para 7 has held as under :

"7. Clause 62(i) to (xiii)(B) is determination of contract owing to default of contractor. It has been argued by learned counsel for the applicant that it is yet to be determined whether contract has been terminated due to default of contractor or due to default of respondent railway authorities. At this stage it cannot be said that determination of contract was due to default of contractor; therefore, matter will not be excepted matter."

6. In present case also, it is to be considered by Arbitrator whether delay

was due to fault on part of contractor or on part of department. Said matter will be considered and decided by Arbitrator in accordance with Arbitration and Conciliation Act, 1996. Only because contract is terminated by Railways and they put the fault on applicant for delay, at this stage, it cannot be said that matter will be falling under purview of excepted matters.

7. In these circumstances, application filed by the applicant is **disposed off** with following directions:

(i) Applicant and respondents are directed to file their claims before Madhya Pradesh Arbitration Centre (Domestic and International), Jabalpur (M.P.D.I.S.E.).

(ii) Arbitration case shall be carried out at Arbitration Centre, Jabalpur.

*(iii) **Hon'ble Justice Shri C.V. Sirpurkar, Retired High Court Judge**, is appointed as Arbitrator in the case, subject to the declarations being made under Section 12 of the 1996 Act (as amended) with respect to the independence and impartiality of the arbitrator, and the ability to devote sufficient time to complete the arbitration within the period specified by Section 29-A of the 1996 Act.*

(iv) Director In-charge of M.P.D.I.S.E. shall obtain consent of aforesaid retired judge to act as Arbitrator in the case and inform the parties and fix the dates of arbitration in consultation with Arbitrator and parties.

(v) Applicant and respondents are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.

(vi) If the sole Arbitrator appointed by the Court does not give his consent for appointment of Arbitrator on conditions mentioned above, then the Director, Madhya Pradesh Arbitration Centre (Domestic and International), Jabalpur (M.P.D.I.S.E.) is at liberty to file an application on administration side for appointment of another Arbitrator or party may file I.A. in this Arbitration Case for appointment of other Arbitrator.

8. Director, M.P. Arbitration Centre is directed to dispatch a copy of this order to **Hon'ble Justice Shri C.V. Sirpurkar, Retired High Court Judge**

for seeking consent at the following address:

**Hon'ble Justice Shri C.V. Sirpurkar,
Former Judge, High Court of M.P.,
R/o 902, Ophira 1, Appollo DB City,
Nipaniya, Indore (M.P.).**

**(VISHAL DHAGAT)
JUDGE**

vkt

