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HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Request No. 30 of 2021**

M/s. S. Narinder Singh & Company, Engineers & Government
Contractors through its Proprietor Manjit Singh,

---- Applicant

Versus

1. South Eastern Coalfields Ltd. Through its Chairman and Managing Director, Headquarter, Seepat Road, Bilaspur, Chhattisgarh, 495006
2. Area General Manager, South Eastern Coalfields Limited, Kusmunda Area, District Korba, Chhattisgarh
3. Engineer-in-Charge, South Eastern Coalfields Limited, Kusmunda Area, District Korba, Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

For Applicant : Mr. Bidya Nand Mishra, Advocate.
For Respondents : Ms. Astha Shukla, Advocate.
Date of Hearing : 29.07.2022
Date of Order : 02.09.2022

Hon'ble Shri Arup Kumar Goswami, Chief Justice**CAV Order**

Heard Mr. Bidya Nand Mishra, learned counsel for the applicant. Also heard Ms. Astha Shukla, learned counsel, appearing for the respondents.

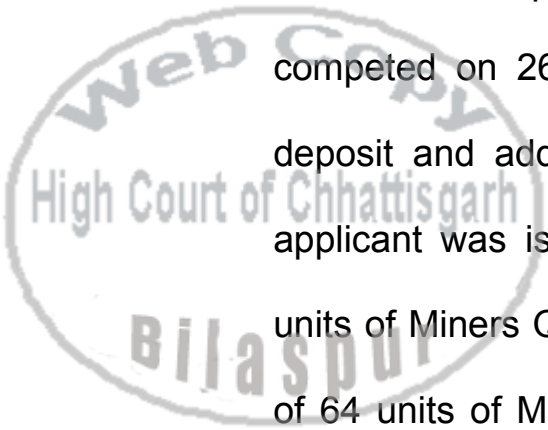


2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for short, 'A&C Act' for appointment of an Arbitrator.

3. The respondents had floated an e-tender notice dated 10.10.2017 for repair/maintenance of 56 units of Miner Quarters near Mangwan Road at Adarsh Nagar Colony of Kusmunda Area under Decent Housing Scheme. The applicant, being the successful tenderer, was awarded the work valued at Rs.63,04,770.68. An agreement was also entered into in between the parties on 15.01.2019.

4. It is pleaded in the application that though work was completed on 26.03.2019, final bill was withheld along with security deposit and additional security deposit. It is also pleaded that the applicant was issued work orders for repair and maintenance of 64 units of Miners Quarters at Adarsh Nagar and repair and maintenance of 64 units of Miners Quarters at Vikas Nagar and the applicant was compelled to execute the said works without entering into any agreement as his previous bills were withheld. The applicant had written number of letters to the respondents requesting them to pay the entire amount, but the same were not responded. A legal notice was issued on 24.08.2021 for an amount of Rs. 8,98,06,430.00. As no steps were taken by the respondents within a period of 30 days as referred to in the letter dated 24.08.2021, the applicant, by a letter dated 27.10.2021, requested to appoint an Arbitrator.

5. A reply was filed on behalf of the respondents stating that the





applicant had, at the time of settlement of fourth and final bill on 16.06.2021, certified that he had no claim outstanding against the department for the work and the claim preferred through the bill was in full and final settlement. It is pleaded that the applicant failed to complete the work within the scheduled time and extensions had to be granted with penalty. The applicant delayed the project work by not executing the agreement and executed the same only on 18.01.2019. The allegation of withholding the bill is denied.

6. A rejoinder was filed by the applicant.

7. An additional affidavit on behalf of the respondents was filed stating that award of work in respect of repair and maintenance of 64 units of Miners Quarters at Adarsh Nagar and repair and maintenance of 64 units of Miners Quarters at Vikas Nagar were terminated. It is pleaded that legal notice dated 24.08.2021 does not relate to work order dated 08.01.2019 for which agreement was executed and the claim of the applicant relates to the repair and maintenance of 64 units of Miners Quarters at Adarsh Nagar and repair and maintenance of 64 units of Miners Quarters at Vikas Nagar, and therefore, the application for appointment of an Arbitrator for resolution of the dispute arising out the said work orders cannot arise in connection with the work order issued for 56 units of Miner Quarters near Mangwan Road at Adarsh Nagar Colony.

8. Mr. Mishra submits that the applicant had raised dispute with regard to the grievances and as no steps were taken by the



respondents in terms of Clause 16 of the General Terms and Conditions of the Contract, the applicant had no option but to approach this Court for appointment of an Arbitrator.

9. Ms. Shukla submits that the applicant had not raised any dispute as raised in the letter dated 24.08.2021 in terms of Clause 16 of the General Terms and Conditions of the contract and a belated claim is made after final payment was made on 16.06.2021. She also submits that though there was no agreement for arbitration in respect of repair and maintenance of 64 units of Miners Quarters at Adarsh Nagar and repair and maintenance of 64 units of Miners Quarters at Vikas Nagar, claims in respect of them were raised in the letter dated 24.08.2021. She has placed reliance on the decision of the Hon'ble Supreme Court in *Kerala State Electricity Board and Another vs. Kurien E. Kalathil and Another*, reported in *(2018) 4 SCC 793*, to contend that when there is no arbitration agreement between the parties, the High Court ought not to have referred the parties to arbitration unless there is joint memo or a joint application of the parties. It is also submitted that while accepting payment of fourth and final bill, the applicant had acknowledged that there was no claim outstanding against the department for repair/maintenance of 56 units of Miner Quarters near Mangwan Road at Adarsh Nagar. Reliance is placed in the decision of the Hon'ble Supreme Court in *Union of India vs. Parmar Construction Company*, reported in *(2019) 15 SCC 682*, wherein the Hon'ble Supreme Court had observed that it is advisable for the Court to ensure that the remedy provided as agreed between the parties in terms of the agreement is first exhausted.



10. I have considered the submission of the learned counsel for the parties and perused the materials on record.

11. Clauses 16 and 16A of the General Terms and Conditions of the Contract, read as follows :

“16. Settlement of Disputes.

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/ claims within 30 (thirty) days of arising of the cause of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.

Effort shall be made to resolve the dispute in two stages :

In first stage dispute shall be referred to Area GM or GM/HoD(C). If difference still persist the dispute shall be referred to a committee constituted by the owner. The committee shall have one member of the rank of Director of the company who shall be chairman of the committee.

If differences still persist, the settlement of the dispute shall





be resolved in the following manner :

Disputes relating to the commercial contracts with Central Public Sector Enterprises/Govt. Departments (except Railways, Income Tax, Customs & Excise) / State Public Sector Enterprises shall be referred by either party for Arbitration to the PMA (Permanent Machinery of Arbitration) in the department of Public Enterprises.

In case of parties other than Govt. Agencies, the redressal of the dispute may be sought through Arbitration (THE ARBITRATION AND CONCILIATION ACT, 1996 as amended by AMENDMENT ACT of 2015).

16A. Settlement of Disputes through Arbitration

If the parties fail to resolve the disputes/differences by in house mechanism, then, depending on the position of the case, either the employer/owner or the contractor shall give notice to other party to refer the matter to arbitration instead of directly approaching Court. The contractor shall, however, be entitled to invoke arbitration clause only after exhausting the remedy available under the clause 16.

In case of parties other than Govt. agencies, the redressal of disputes/differences shall be sought through Sole Arbitration as under.



**Sole Arbitration :**

In the event of any question, dispute or difference arising under these terms & conditions or any condition contained in this contract or interpretation of the terms of, or in connection with this Contract (except as to any matter the decision of which is specially provided for by these conditions), the same shall be referred to the sole arbitration of a person, appointed to be the arbitrator by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be). The award of the arbitrator shall be final and binding on the parties of this contract.

(a) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his/her award being set aside by the court for any reason, it shall be lawful for the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(b) It is further a term of this contract that no person other than the person appointed by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all.

....."



12. Legal notice dated 24.08.2021 is extracted as follows :

“To,

Date 24/8/2021

1. Chairman & Managing Director
South Eastern Coalfields Limited
Headquarters Seepat Road Bilaspur C.G.

2. Area General Manager
South Eastern Coalfields Limited
Kusmunda Area Dist. Korba C.G.

3. Engineer In Charge
South Eastern Coalfields Limited
Kusmunda Area Dist. Korba C.G.

From :-

S. Narinder Singh & Company Contractor A-85 Power
City Jamnipali Korba Dist Korba C.G.

Reference

Work Order Number SECL.GM/KSA/C/ 17-18/ 881
dated 13.2.2018, NIT Dated 10.10.2017 for the
work of "Repair/ maintenance of 56 units Miners
Quarters Near mangawn Road at Adarsh Nagar
Colony of Kusmunda Area". In addition to the
above works my client was issued work orders for
64 Units at Adarsh Nagar, 64 Units at Vikas Nagar.

Sub :-

Legal notice on behalf of my client for resolution of
dispute and settlement of claims of my client by
referreing the dispute for arbitration and for

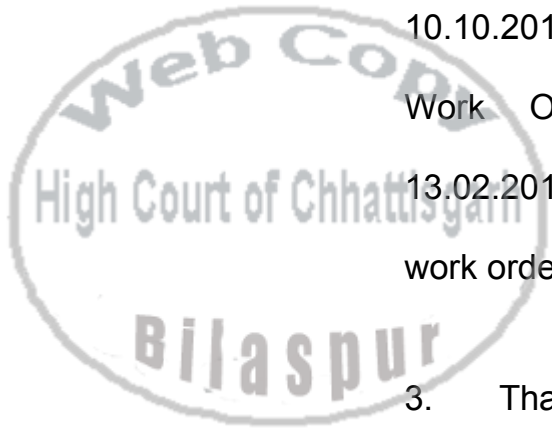




appointment of arbitrator as per the General Conditions of Contract.

Under instructions and authorization on behalf of my client Narinder Singh & Company I serve you with this notice :

1. That, my client is a renowned entity and is engaged in the business of civil construction works and other allied activities.
2. That you the above named noticee invited tenders for "Repair / maintenance of 56 units Miners Quarters Near Mangawn Road at Adarsh Nagar Colony of Kusmunda Area" vide NIT dated 10.10.2017 for which a work order was issued to my client bearing Work Order Number SECL. GM/KSA/C/17-18/881 dated 13.02.2018. In addition to the above works my client was issued work orders for 64 Units at Adarsh Nagar, 64 Units at Vikas Nagar.
3. That my client "Contractor" immediately commenced the works as per the requirements and conditions as prescribed in the Tender Conditions and agreement. My client had also deposited the requisite amount towards performance security.
4. That my client successfully completed the works strictly as per the specifications in the tender conditions. The works for 56 units of miners quarters were completed on 23.6.2019. That despite the completion of works for 56 Units Miners quarters the Final Bill for 56 Units Miners Quarters was withheld alongwith the security deposit and the additional security deposit was also withheld. The amount withheld towards final bill amounts to





Rupees 2280526 which shall be released with interest at the rates of 18 % per annum.

5. That my client pleads submits and states that during the process of execution of works of 56 Quarters my client was issued with two more work order. 1. Repair and Maintenance of 64 Units Miners Quarters at Vikas Nagar 2. Repair and Maintenance of 64 Units Miners Quarters at Adarsh Nagar.

6. That my client states that the two additional works for 1. Repair and Maintenance of 64 Units Miners Quarters at Vikas Nagar 2. Repair and Maintenance of 64 Units Miners Quarters at Adarsh Nagar was issued to my client under duress. My client states that you the Noticee compelled my client to execute the additional works by exercising threat, coercion and undue influence. My client was threatened that if he does not execute the additional works his previous final bills as well as security deposits shall be withheld and forfeited. It is however stated by my client that only work orders were issued for additional works to my client however no formal agreement was executed for additional work.

7. That the works awarded to my clients alongwith additional works was executed with the highest quality to fullest satisfaction of the officers of the Company SECL. It is also settled by the judicial precedents laid down by the Hon'ble Supreme court that the Company is liable to reimburse and compensate for the works done even if no formal agreement was executed between the parties. The additional works were supervised by onsite engineers





of SECL and it was duly approved by them.

8. That during the execution of additional works you the Company exploited your dominant position and superior bargaining power deliberately neglected to reimburse and compensate my client for additional works causing serious financial loss mental agony and harassment to my client. You the Company also neglected to release the security deposit within the time stipulated as per the agreement causing after the loss to my client.

9. The details of the claims of my client is as under:

1. Interest for late payment of final bill for 56 units for two years
228052*18% for 2 years ----- Rs. 820989
2. Late release of Addl PSD money of Rs. 701247 with interest
18% for 1.75 years -----Rs. 220893
3. Late release of PSD money of 56 units Rs.305148 for 1.5
years-----Rs. 82390
4. Late finalization of contract 56 units salary of one supervisor for
two years 18500*24-----Rs. 444000
Salary of two guards 16000*2*24 months-----Rs.1536000
5. Extra fuel cost for two years-----Rs.150000
6. Loss of Business in two years-----Rs.15000000
7. Penalty imposed by Company deducted from final





bill-----Rs.630478

8. Earnest money of 64 units at Vikas Nagar 108300+final bill
Rs.4000000 Total Rs. 4108300 with interest @ 18% for 3
years-----Rs.6326782

9. 64 units at Adarsh Nagar Earnest money Rs.102800+final bill
1645000=1747800 with interest @18% for 3 years---Rs.2691612/-

10. Ban by SECL for one year for all tenders with
SECL-----Rs.2000000/-

11. Mental agony and harassment-----Rs. 15000000/-

12. Termination of 2 contracts-----Rs 10000000/-

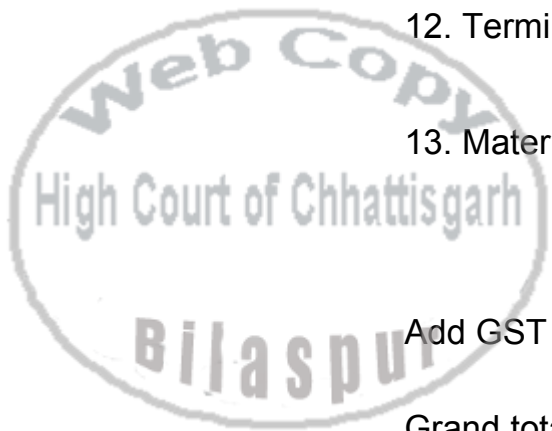
13. Material lying at site stores-----Rs. 900000/-

Total-----Rs.76107144/-

Add GST 18% Rs. 13699286/-

Grand total Rs. 89806430 only

10. It is therefore being stated to your Company South Eastern Coalfields Limited that you may kindly disburse and release the additional amount as claimed by my client amounting to Rupees 89806430/ only along with interest at the rate of 18% per annum till the date of actual payment within a period of 30 days from the receipt of this notice. In case if you dispute the amount as claimed by my client you are requested by this notice to refer the dispute for resolution by way of Arbitration within 30 days of receipt of this notice so that the matter may be resolved at the earliest. Take further notice that if the amount as claimed by my client is not





disbursed or the steps has not been initiated by you for resolution of disputes through Arbitration by appointment of Arbitrator my client shall be considered to initiate appropriate proceedings in the court of law for resolution of disputes through arbitration or otherwise for which you shall be responsible for the costs and consequences thereof.

My client earnestly anticipates that the matter be resolved at the earliest.

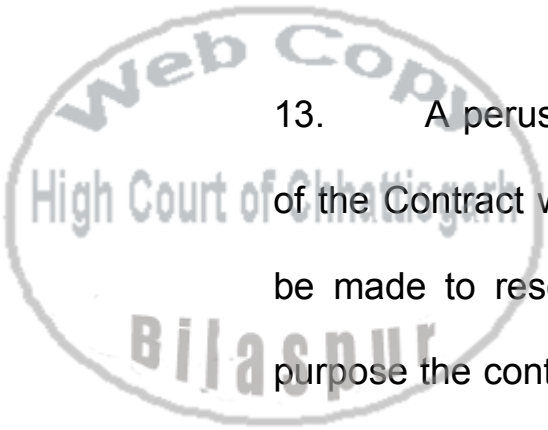
A copy of this notice is retained by me for future reference.

Yours Sincerely

Sd/-"

13. A perusal of Clause 16 of the General Terms and Conditions of the Contract would go to show that if there is a dispute, effort shall be made to resolve the disputes at the company level and for that purpose the contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 days of arising of the cause of dispute/claim failing which it is indicated that no disputes/claims of the contractor shall be entertained by the company.

14. Pursuant to an order of the Court dated 08.07.2022, an additional affidavit is filed by the SECL, stating that Engineer-in-charge / Staff Officer is the executive head of civil department and as per Clause 16 of the contract, any dispute/claim has to be raised by the contractor to the Engineer-in-charge/Staff Officer (Civil) at the first instance within 30 days from the dispute/claim.





15. A perusal of the claims, as made in the legal notice dated 24.08.2021, would go to show that there is no material on record to show that the applicant had raised any dispute with regard to the claims made therein to the Engineer-in-charge or to any authority at any point of time prior to 24.08.2021. No doubt, some letters were written for early payment but claim for interest, etc. was never raised at any point of time prior to issuance of the legal notice. For the first time, such disputes/claims as raised in the legal notice dated 24.08.2021 were raised after fourth and final bill was paid on 16.06.2021. Further more, disputes / claims with regard to repair and maintenance of 64 units of Miners Quarters at Adarsh Nagar and repair and maintenance of 64 units of Miners Quarters at Vikas Nagar for which there was no agreement were also clubbed together.

16. As recourse was not taken to in-house dispute resolution mechanism by the applicant in terms of Clause 16 of the General Terms and Conditions of the Contract, I am of the opinion that no case is made out for appointment of an arbitrator.

17. Accordingly, the application is rejected.

Sd/-

(Arup Kumar Goswami)
CHIEF JUSTICE