

(2019) 12 JH CK 0092

In the Jharkhand High Court

Case No : Arbitration Application No. 16 Of 2018

Central Institute Of Mining

APPELLANT

Vs

M/s Suparna Chemicals Ltd

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Citation : (2019) 12 JH CK 0092

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Abhay Prakash, H. K. Mehta

Judgement

1. Heard Mr. Abhay Prakash, counsel appearing on behalf of the petitioner.
2. This petition has been filed with a prayer for issuance of an appropriate order for appointment of an Arbitrator as per Clause 11 of the Agreement (Agreement for Collaborative Research) dated 30.07.2003 entered into by & between the petitioner and the sole respondent (M/s Suparna Chemicals Ltd.) as disputes have arisen between the parties in terms of Clause 7.2 of the Agreement with regard to payment of royalty to the petitioner.
3. It is the case of the petitioner that the respondent had approached the petitioner with a proposal to develop an indigenous chemical oxygen self-rescuer for use in the coalmines and other related areas for safety of the personnel working in the hazardous condition. In view of the proposal of the respondent, the petitioner entered into an agreement with the respondent vide agreement dated 30.07.2003 for testing the performance of the so developed chemical oxygen self-rescuer known as Raksha Kawach -30 as per the norms of EN- 401 and it is the claim of the petitioner that the respondent agreed to pay royalty. It has been further stated by the petitioner

that as per the terms of agreement, all the tests were performed maximum of which were performed in the presence of authorized representatives of the respondent and then, final report was submitted, wherein after the respondent even paid some royalty as per the terms of the agreement in the year 2005-06. The dispute arose when the respondent stopped paying royalty to the petitioner, without any intimation.

4. The counsel for the petitioner submits that in such circumstances, a demand letter was sent to the respondent regarding royalty vide letter dated

04.06.2015 and in response to such letter, the respondent raised a counter claim vide its advocate reply dated 17.02.2016.

5. The learned counsel for the petitioner has referred to the letter dated 17.02.2016, wherein the respondent had invoked arbitration clause in the

agreement calling to refer the dispute and differences to arbitral tribunal according to the provisions of Arbitration and Conciliation Act, 1996.

6. A copy of the arbitration agreement is on record and clause 11 of the agreement reads as follows:

11. Arbitration

In the event of any dispute or differences between the parties, hereto, such dispute or differences shall be resolved amicably by mutual discussion.

Any such dispute or differences which cannot be resolved, then the unresolved dispute or differences shall be referred to and settled by

arbitration in accordance with the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Dhanbad. Appropriate court

at Dhanbad alone shall have jurisdiction on any matter arising from this agreement.

If there is breach of agreement CMRI, Dhanbad has the right to withdraw its name from the product.

7. The learned counsel for the petitioner further submits that a reply to the aforesaid letter dated 17.02.2016 was sent by the petitioner vide letter

dated 13.04.2018, which was a detailed para-wise reply and it has been stated in the main petition that the petitioner did not receive any reply to the

same. The learned counsel for the petitioner submits that there is no dispute that there are claim and counter-claim arising out of the agreement

between the parties and the respondent itself had invoked arbitration clause.

Accordingly, he submits that an independent Arbitrator is required to be appointed.

8. Learned counsel for the respondent, on the other hand, does not dispute the fact that the matter is required to be referred to an Arbitrator.

However, he submits that the letter dated 13.04.2018 was responded to by the respondent by issuing a letter which has been annexed along with the counter-affidavit.

9. Counsel for the parties jointly pray that an Arbitrator may be appointed.

10. It is also important to note that one criminal case has been instituted by Central Bureau of Investigation bearing R.C. Case No.8 (A) of 2016 (D)

and charge sheet has been submitted on 24.07.2019. The allegation reflects manipulation/alteration in the agreement between the parties regarding

reduction of period and rate of interest without obtaining approval of competent authority. A copy of the F.I.R and charge sheet is on record.

11. This Court finds that the claim relates to entitlement of the petitioner for doing certain work as per the agreement having arbitration clause. In

such circumstances, merely because a criminal case is pending, it cannot be a ground to refuse to refer the matter for arbitration. Arbitration

proceedings can certainly be considered by the learned arbitrator by taking into account the issue of registration of criminal case in addition of any

other issue that may legitimately arise. Such view has been taken by the Honâ??ble Supreme Court in the judgment reported in (2014) 6 SCC 677

(Swiss Timing Ltd. Vs. Commonwealth Games 2010 Organising Committee); (2015) 16 SCC 258 (China Railway Shisiju Gr. Corpn. Vs. New Delhi

Municipal Council).

12. Considering the aforesaid facts and circumstances of this case, this Court is of the considered view that the condition precedent for appointment

of an Arbitrator by this Court has been satisfied and learned counsel for both the parties have requested for appointment of an independent Arbitrator.

The entire dispute appears to be relating to payment of royalty and there is also a counter-claim on the part of the respondent. This Court proposes to

appoint Mr. Biren Poddar, learned Senior Advocate of Jharkhand High Court as an Arbitrator to adjudicate the dispute between the parties.

13. Counsels for the parties have also expressed their confidence on the proposed Arbitrator.

14. Accordingly, for seeking consent from Mr. Biren Poddar, Senior Advocate, and to ascertain if he has any interest in the said matter in terms of

Schedule 5 of Arbitration and Conciliation Act, 1996 to adjudicate the dispute between the parties, learned Registrar General of this Court is directed

to communicate this order along with the records of this case to the proposed arbitrator for submission of declaration under clause-12(1) of the

amended provisions of Arbitration and Conciliation Act, 1996.

15. Office is directed to list this case on 09.01.2020 awaiting declaration from the proposed Arbitrator.