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**(2014) 05 MP CK 0197**

**In the Madhya Pradesh High Court**

**Case No : Arbitration Case Nos. 8/2008 and 31/2010**

Radhe Machinery

APPELLANT

Vs

Chairman

RESPONDENT

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**Date of Decision :** 05-05-2014

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 11(6), 15, 34

**Citation :** (2014) 3 MPHT 247 : (2014) 3 MPLJ 52

**Hon'ble Judges :** Alok Aradhe, J

**Bench :** Single Bench

**Advocate :** Amrit Ruprah, Advocate for the Appellant; Greeshm Jain, Advocate for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Alok Aradhe, J.—Since common issue arises for consideration in both the cases, accordingly, the aforesaid cases were heard analogously and are being decided by this common order. For the facility of reference, facts of Arbitration Case No. 8/2006 are being referred. The Deputy Chief Engineer (Civil), Northern Coalfields Ltd., Khariya Project, issued a Notice Inviting Tender on 21-8-2000 for construction of civil work. The applicant submitted its bid in response to the aforesaid Notice Inviting Tender and a letter of intent was issued on 6-1-2001. It is the case of the applicant that on 3-3-2001, it successfully completed the work. Thereafter, on 26-12-2001, the applicant made a request to the non-applicant to make payment of the amount of bill towards the work executed by the applicant. Thereafter, the applicant served a notice dated 31-5-2004 to the Chairman-cum-Managing Director the Northern Coalfields Limited, seeking appointment of an Arbitrator. By an order dated 29-12-2004, the Chairman-cum-Managing Director rejected the request of the applicant for appointment of the Arbitrator, on merits. Being aggrieved by the aforesaid order, the applicant filed an application u/s 15 read with Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), before the District Judge. The District Judge vide order

dated 31-3-2006 allowed the application preferred by the applicant and directed the Chairman-and-Managing Director to hear the application and to resolve the dispute. The aforesaid order was challenged by the non-applicants in appeals namely Misc. Appeal No. 2473/2006 and Misc. Appeal No. 2472/2006, which were allowed by a Bench of this Court vide order dated 23-10-2006 and the proceedings of the District Court were transferred to this Court. Accordingly, the proceedings were registered as MCC and were treated as an application u/s 11(6) of the Act.

2. Learned Counsel for the applicant while inviting the attention of this Court to letter of intent dated 6-1-2001 submitted that the general terms and conditions of the contract, which contains the arbitration clause, forms part of the contract and, therefore, the applicant is entitled to seek appointment of an Arbitrator. It is further submitted that neither in the order dated 29-12-2004 passed by the Chairman-cum-Managing Director nor in the reply, which was filed by non-applicant in the proceeding before the District Court, a stand was taken that the agreement does not contain an arbitration clause. Learned Counsel for the applicant further submits that the head quarter of the non-applicant is situate in Singrauli and, therefore, this Court has territorial jurisdiction to decide the application u/s 11(6) of the Act. In support of her submissions, learned Counsel for the applicant has placed reliance on decision of the Supreme Court in the case of Chloro Controls (I) P. Ltd. Vs. Severn Trent Water Purification Inc. and Others,

3. On the other hand, learned Counsel for the non-applicant while opposing the submissions made by learned Counsel for the applicant, has pointed out that the terms and conditions contained in the general terms and conditions of the contract have been made applicable for the limited purpose of execution of the agreement and there is no provision under the agreement for appointment of the Arbitrator. It is further pointed out that against the order dated 29-12-2004 passed by the Chairman-cum-Managing Director, the applicant had in fact filed an objection u/s 34 of the Act, treating the same to be an award. It is further submitted that since the place of work of contract falls under the jurisdiction of Khariya, District Sonbhadra in the State of Uttar Pradesh, therefore, this Court has no territorial jurisdiction to entertain the application. In support of his submissions, learned Counsel for the non-applicant has placed reliance on a decision of the Supreme Court in the case M.R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd.,

4. I have considered the submissions made on both sides. It is well-settled in law that while invoking powers u/s 11(6) of the Act, the existence of a valid arbitration agreement, is a sine qua non. See: S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, and Speech and Software Technologies (India) Pvt. Ltd. Vs. Neos Interactive Ltd., The Supreme Court in the case of M.R. Engineering (supra), has held as follows:--

(i) An application clause in another document, would get incorporated into a

contract by reference, if the following conditions are fulfilled:--

- (1) The contract should contain a clear reference to the documents containing arbitration clause,
- (2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,
- (3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

The aforesaid decision has been approved in the case of Severn Trent Water Purification (*supra*).

5. In the backdrop of aforesaid well-settled legal position, facts of the case may be seen. The letter of intent on which reliance has been placed by the applicant reads as follows:--

The work should be executed as per General Terms and Conditions, Special Terms & Conditions, CPWD Specification, BIS Standards description of the items of the accepted tender documents and instructions of EIC.

From perusal of the letter of intent, it is evident that there is no intention on the part of the non-applicant to incorporate the arbitration clause, which is contained in the general terms and conditions of the contract. The letter of intent refers to general conditions of the contract only for the limited purpose of execution of the contract; and there is no incorporation of arbitration clause in the letter of intent. In view of the decision of the Supreme Court in the case of M.R. Engineering (*supra*), there is no arbitration clause between the parties and, therefore, the applicant u/s 11(6) of the Act, cannot be entertained.

In the result, the application fails and is hereby dismissed.