

(2010) 02 AHC CK 0011

In the Allahabad High Court

Case No : C.M. Arbitration Application No. 49 of 2008

Satya Prakash and Bros. Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(1), 11(2), 11(3), 11(4)
Constitution of India, 1950 — Article 136

Citation : (2010) 3 AWC 2744 : (2010) 5 RCR(Civil) 411

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; Amit Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Supplementary and rejoinder-affidavits filed today are taken on record.

2. By this application u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), the applicant has sought for appointment of an Arbitrator to decide the dispute arisen between the parties. It is stated that the applicant M/s. Satya Prakash and Bros. Pvt. Ltd. is a Company registered under the provisions of Indian Companies Act, 1956 and Sri Satya Prakash Gupta is Director and Principal Officer of the Company and he is duly authorised and fully competent to sign, verify, institute the present petition for and on behalf of the Company. The applicant company is working as Government Contractor under the name and style indicated herein before.

3. The material facts leading to the case are that the Respondent No. 2 had invited tender for construction of Cement Concrete Road in Aligarh City Portion from 131.500 to 134.370 of NH-91 in the State of Uttar Pradesh. In response to which applicant submitted its tender and was awarded work contract vide an Agreement No. 13/SE/16-2004, dated 18.9.2004 signed by the parties. Under

the said agreement the execution of work was to be commenced w.e.f. 28.9.2004 and to be completed by 27.9.2005. The estimated cost of work contract was Rupees nine crores fifty two lacs two thousand and eight hundred fifty nine and eighty two paise (Rs. 9,52,02,859.82) only. A true attested copy of the agreement alongwith general conditions of the contract which contains an arbitration clause collectively filed as Annexure-2 to the application. It is stated that after receipt of letter for execution of work, the applicant made all necessary arrangement for labour, material and other infra-structure for execution of said work, thereafter the office of Respondent No. 3 vide letter dated 18.3.2006 had asked the applicant to do some additional work at the places mentioned in the said letter and the applicant was asked to intimate the rates that would be charged. In pursuance thereof the applicant quoted its rates for the said additional work vide letter dated 30.3.2006. It is further stated that vide letter dated 15.5.2006 the Respondents had asked the applicant to execute the said additional work expeditiously, in response to which vide its letter dated 18.5.2006 the applicant informed the Respondent No. 3 that the rates of bitumen had increased enormously, therefore, without finalizing the rates it would not be possible to execute these items. However, the applicant requested for release of its pending bills. A copy of letter dated 18.5.2006 is on record as Annexure-7 to the application. It is further stated that vide its letter dated 29.8.2006 the applicant informed the Respondent No. 1 that the work had been completed by it but since after completion of the work the entire staff of the department was transferred to Bareilly Division and thereafter to Etawah Division, therefore, the bills may be forwarded to the concerned Division for payment of balance amount of Rs. 105 lacs. A true copy of said letter is on record as Annexure-8 to the application. Thereafter the Respondents vide their letter dated 11.5.2007 raised frivolous objections, as such the applicant filed written protest vide letter dated 21.5.2007 well within specified period of 20 days as provided under Clause 32 of the General Conditions of contract. Despite thereof the Engineer Incharge insisted upon the objections raised by him and communicated to the applicant vide letter dated 4.6.2007. True copies of letters dated 21.5.2007 and 4.6.2007 are on record as Annexures-10 and 11 to the application.

4. Aggrieved by the decision of Engineer Incharge vide its letter dated 9.6.2007 the applicant requested for appointment of Arbitrator as per Clauses 32 and 34 of the Agreement, but when the Respondents were failed to appoint Arbitrator, the applicant approached this Court for appointment of Arbitrator u/s 11 of the Act. The aforesaid application was numbered as Arbitration Application No. 52 of 2007. During the pendency of said application the Respondent Nos. 2 and 3 assured the applicant that they were examining its claim and its payment will be made within a short period, but they will consider the matter of payments to the applicant only in case it withdraws the arbitration petition pending before this Court. Thereafter the applicant withdrew the Arbitration Petition No. 52 of 2007 and this Court vide order dated 4.1.2008 given liberty to the applicant to file fresh petition, in case, the efforts for settlement of the dispute fail. A true copy

of the order of this Court dated 4.1.2008, passed in Arbitration Application No. 52 of 2007 is on record as Annexure-16 to the application. After withdrawal of the said arbitration application, the applicant approached the Respondents several times and they kept assuring its Director that they are making efforts to release payments. However, no concrete measure was taken by them, therefore, the applicant vide letter dated 8.4.2008 again requested the Respondent No. 3 to release payments as the applicant company had already withdrawn the arbitration petition. A true copy of the said letter dated 8.4.2008 is on record as Annexure-17 to the instant application. It was followed by reminders dated 15.5.2008 to Respondent No. 2 and dated 7.4.2008 to Respondent No. 3 and filed as Annexures-18 and 19 to the application. Besides this, the applicant personally went to the office of Respondents No. 2 and 3 in July, 2008 and requested them to release the payments, but the Respondent No. 2 has flatly refused to release any further payment and reiterated his earlier stand. It is stated that since even after expiry of more than six months, when the Respondents has not undertaken any concrete measure for releasing the payments of pending bills, the applicant company is compelled to approach this Court again for appointment of Arbitrator.

5. Opposing the application for appointment of Arbitrator by this Court a detail counter-affidavit has been filed on behalf of the Respondents, whereby although they did not dispute the execution of aforesaid work contract by the applicant but denied any outstanding dues of the applicant still remains to be paid by them. Contrary thereto it is also stated in the counter-affidavit that on account of execution of sub-standard work, they have terminated the work contract vide letter dated 10.9.2008 and are going to make recovery of Rs. 2,32,27,721 (Rs. Two crores thirty two lacs twenty seven thousand seven hundred twenty one) from the applicant. Besides this, in paras 4, 14, 15, 16 and 25 of the aforesaid counter-affidavit it is stated that Clauses 32 and 34 referred to as arbitration clauses under general conditions of contract, marked as Annexure-12 of the application are not at all part of the agreement in question, hence no action is required by the Respondents in pursuant thereto. It is also stated that the aforesaid arbitration clauses are not contained under General Conditions of the Agreement in question, rather they are General Condition of some other agreement. The Respondents have also filed a copy of contract bond signed by the parties pertaining to the agreement in question as Annexure-11 of the counter-affidavit.

6. Heard Sri M. K. Gupta, learned Counsel for the applicant and learned standing counsel for the Respondents.

7. In order to appreciate the question in controversy involved in the case, it would be useful to refer the provisions of Section 7 of the Act which deals with the arbitration agreement. The provisions of Section 7 of the Act in extenso are extracted as under:

7. Arbitration agreement.- (1) In this Part, "arbitration agreement" means an

agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in:

(a) a document signed by the parties ;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement ; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. Section 11 of the Act deals with the appointment of the Arbitrators, but for the purpose of questions in controversy only provisions of Sub-sections (1) to (8) of Section 11 of the Act are relevant and are extracted as under:

11. Appointment of Arbitrators.- (1) A person of any nationality may be an Arbitrator, unless otherwise agreed by the parties.

(2) Subject to Sub-section (6), the parties are free to agree on a procedure for appointing the Arbitrator or Arbitrators.

(3) Failing any agreement referred to in Sub-section (2), in an arbitration with three Arbitrators, each party shall appoint one Arbitrator, and the two appointed Arbitrators shall appoint the third Arbitrator who shall act as the Presiding Arbitrator.

(4) If the appointment procedure in Sub-section (3) applies and:

(a) a party fails to appoint an Arbitrator within thirty days from the receipt of a request to do so from the other party ; or

(b) the two appointed Arbitrators fail to agree on the third Arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in Sub-section (2), in an arbitration with a sole Arbitrator, if the parties fail to agree on the Arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any

person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties:

(a) a party fails to act as required under that procedure ; or (b) the parties, or the two appointed Arbitrators, fail to reach an agreement expected of them under that procedure ; or (c) a person including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by Sub-section (4) or Sub-section (5) or Sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an Arbitrator, shall have due regard to:

(a) any qualifications required of the Arbitrator by the agreement of the parties ; and (b) other considerations as are likely to secure the appointment of an independent and impartial Arbitrator.

9. Before proceeding further to deal with the questions in controversy involved in the case, it is to be noted that a seven-Judges Constitution Bench of Hon''ble Apex Court in S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, while dealing with the essential elements for constitution of arbitral Tribunal held that the power exercised by the Chief Justice of High Court or the Chief Justice of India u/s 11(6) of the Act is not an administrative power rather it is a judicial power and further held that while constituting an arbitral Tribunal under the scheme of the Act, the Chief Justice has to consider whether he as Chief Justice has jurisdiction in relation to the contract, whether there was an arbitration agreement in terms of Section 7 of the Act and whether person before him, with request, is a party to the arbitration agreement. On coming to the conclusion on these aspects he has to enquire whether the conditions for exercise of his power u/s 11(6) of the Act exist in the case and only on being satisfied in that behalf he could appoint an Arbitrator on the basis of the request.

10. The pertinent observations made by Hon''ble Apex Court in para 24 of the aforesaid decision are quoted as under:

24....Merely because the main purpose was the constitution of an arbitral Tribunal, it could not be taken that the exercise of power is an administrative power. While constituting an arbitral Tribunal, on the scheme of the Act, the Chief Justice has to consider whether he as the Chief Justice has jurisdiction in relation to the contract, whether there was an arbitration agreement in terms of Section 7 of the Act and whether the person before him with the request, is a party to the arbitration agreement. On coming to a conclusion on these aspects, he has to enquire whether the conditions for exercise of his power u/s 11(6) of the Act

exist in the case and only on being satisfied in that behalf, he could appoint an Arbitrator or an arbitral Tribunal on the basis of the request. It is difficult to say that when one of the parties raises an objection that there is no arbitration agreement, raises an objection that the person who has come forward with a request is not a party to the arbitration agreement, the Chief Justice can come to a conclusion on those objections without following an adjudicatory process. Can he constitute an arbitral Tribunal, without considering these questions? If he can do so, why should such a function be entrusted to a high judicial authority like the Chief Justice. Similarly, when the party raises an objection that the conditions for exercise of the power u/s 11(6) of the Act are not fulfilled and the Chief Justice comes to the conclusion that they have been fulfilled, it is difficult to say that he was not adjudicating on a dispute between the parties and was merely passing an administrative order. It is also not correct to say that by the mere constitution of an arbitral Tribunal the rights of parties are not affected. Dragging a party to an arbitration when there existed no arbitration agreement or when there existed no arbitrable dispute, can certainly affect the right of that party and even on monetary terms, impose on him a serious liability for meeting the expenses of the arbitration, even if it be preliminary expenses and his objection is upheld by the arbitral Tribunal. Therefore, it is not possible to accept the position that no adjudication is involved in the constitution of an arbitral Tribunal.

11. While concluding the judgment in para 46 of the decision Hon"ble Apex Court has summarised the propositions of law as under:

46. We, therefore, sum up our conclusions as follows:

- (i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India u/s 11(6) of the Act is not an administrative power. It is a judicial power ;
- (ii) The power u/s 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court ;
- (iii) In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercised by the designated, Judge would be that of the Chief Justice as conferred by the statute ;
- (iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the Arbitrator or Arbitrators. The Chief Justice or the Judge designated would be entitled to seek the opinion of an institution in the matter of nominating an Arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the Arbitrator could only be that of the Chief Justice or the Judge designate ;

(v) Designation of a District Judge as the authority u/s 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act ;

(vi) Once the matter reaches the arbitral Tribunal or the sole Arbitrator, the High Court would not interfere with orders passed by the Arbitrator or the arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act ;

(vii) Since an order passed by the Chief Justice of the High Court or by the designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court ;

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application u/s 11(6) of the Act ;

(ix) In a case where an arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the arbitral Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act ;

(x) Since all were guided by the decision of this Court in *Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.*, and orders u/s 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of Arbitrators or arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided u/s 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications u/s 11(6) of the Act ;

(xi) Where District Judges had been designated by the Chief Justice of the High Court u/s 11(6) of the Act, the appointment orders thus far made by them will be treated as valid ; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the concerned High Court or a Judge of that Court designated by the Chief Justice ; and (xii) The decision in *Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.*, is overruled.

12. In view of legal position stated hereinbefore, it is necessary to examine that as to whether there exist any arbitration agreement between the parties within the meaning of Section 7 of the Act? In this connection it is to be pointed out that although the applicant has stated that there exist arbitration agreement between the parties in paragraphs No. 32 and 34 of General Conditions of Contract and same has been brought on record collectively as Annexure-2 of the application but Respondents in their counter-affidavit has specifically denied the same. Contrary thereto, in paras 4, 14, 15, 16 and 25 of the said counter-affidavit it is specifically stated that the Clauses 32 and 34 of the general conditions of the contract referred to by the applicant and also separately filed

and marked as Annexure-12 of the application are not arbitration clauses of the agreement in question, rather they are general conditions of some other contract. Therefore, the applicant cannot seek enforcement of the aforesaid clauses and cannot request for appointment of Arbitrator thereunder. However, the Respondents have filed relevant part of the contract bond signed by the parties of agreement in question as Annexure-11 of the counter-affidavit. From perusal of Annexure-11 of the counter-affidavit, it appears that at page 201 of the paper book of the counter-affidavit there exist arbitration clause at item No. 25.3 under special conditions of contract. Under this arbitration clause the procedure for appointment of Arbitrator and settlement of dispute through arbitration have been provided.

13. It would be useful to extract the aforesaid arbitration clause incorporated under special conditions of the contract as under:

25.3 (a) In case of dispute or difference arising between the employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The parties shall make efforts to agree on a sole Arbitrator and only if such an attempt does not succeed and the arbitral Tribunal consisting of 3 Arbitrators one each to be appointed by the Employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the parties to act as Presiding Arbitrator shall be considered. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress.

(b) The arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties, and shall act a Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress.

(c) If one of the parties fails to appoint its Arbitrator in pursuance of Sub-clauses (a) and (b) above within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Council, Indian Roads Congress shall appoint the Arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.

(d) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(e) The decision of the majority of Arbitrators shall be final and binding upon both parties. The cost and expenses of arbitration proceedings will be paid as

determined by the arbitral Tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself.

(f) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject-matter of the arbitration proceedings.

14. Thus, in view of aforesaid provisions of arbitration clause admittedly contained under the contract bond signed by the parties there can be no scope for doubt to hold that the aforesaid Clause No. 25.3 of the special conditions of contract is arbitration clause contained in the contract document within the meaning of Section 7 of the Act, and there can be no dispute about the existence of arbitration agreement between the parties. Therefore, I hold that there exist arbitration agreement between the parties, within the meaning of Section 7 of the Act.

15. Now next question arises for consideration is that as to whether there exist any arbitrable dispute between the parties or not? In this connection it is to be noted that from bare reading of the pleadings of the parties it appears that the applicant and Respondents have their respective claims against each other, as such the existence of arbitrable dispute between the parties cannot be doubted, rather can be readily assumed. Therefore, I have no hesitation to hold that arbitrable dispute between the parties is still subsisting and as such it is left to be examined by the Arbitrator on merits on the basis of materials to be produced before him.

16. Now next question arises for consideration is that as to whether in given facts and circumstances of the case the conditions precedent for exercise of power for constituting arbitral Tribunal u/s 11(6) of the Act are satisfied or not? In this connection, it is to be noted that vide letter dated 9.6.2007 written to the Chief Engineer the applicant had requested for appointment of Arbitrator. When the Respondent had failed to appoint Arbitrator, the applicant was compelled to approach this Court and filed application u/s 11(6) of the Act earlier to this application, which was numbered as Arbitration Application No. 52 of 2007 but the aforesaid application was withdrawn by the applicant on account of assurance of Respondents with understanding that the applicant's payment shall be made by the Respondents within reasonable time after due consideration. But when the Respondents have flatly refused from making alleged payment to the applicant, it has again approached this Court by filing instant application as liberty was already given by this Court vide order dated 4.1.2008, passed in its earlier application that the applicant can again approach this Court for appointment of Arbitrator. In this view of the matter, it is clear that there exist arbitrable dispute between the parties and Respondents have failed to appoint Arbitrator on demand made by the applicant according to the terms of arbitration agreement on receipt of notice served upon the concerned Respondent within 30 days and

even after lapse of much period, as such the Chief Justice or designated Judge of this Court is empowered to appoint sole Arbitrator at his discretion in exercise of power under the provisions of Section 11(6) of the Act.

17. In this connection, it would be useful to refer some decisions of Hon''ble Apex Court wherein Apex Court has occasion to consider such controversy. In *Punj Lloyd Ltd. v. Petronet M.H.B. Ltd.*, (2006) 2 SCC 638, it has been held that if the party having right to appoint Arbitrator under arbitration agreement has failed to do so within 30 days of notice serviced upon him by the applicant, thereafter such party loses his right to appoint Arbitrator and the Chief Justice or designated Judge of High Court on request being made by the applicant u/s 11(6) of the Act is empowered to appoint sole Arbitrator at his own behalf.

18. However, in *Ace Pipeline Contracts Private Limited Vs. Bharat Petroleum Corporation Limited*, Hon''ble Apex Court has held that so far as Section 11(6) is concerned, if one party demands the opposite party to appoint Arbitrator and opposite party does not make an appointment within 30 days of the demand, the right to appoint Arbitrator does not automatically forfeit after expiry of 30 days. If the opposite party makes an appointment after 30 days of the demand but before the first party moved the Court u/s 11(6) of the Act that would be sufficient. In other words in cases arising u/s 11(6) if opposite party has not made an appointment within 30 days of the demand, the right to make appointment is not forfeited but continues. But an appointment has to be made before the former files application u/s 11(6) of the Act seeking appointment of Arbitrator, only then the right of opposite party ceases.

19. The aforesaid view taken by Hon''ble Apex Court is reiterated in subsequent decision rendered by Hon''ble Apex Court in *Bharat Sanchar Nigam Ltd. and Another Vs. Motorola India Pvt. Ltd.*, . The pertinent observations made in this regard in para 36 of the decision are extracted as under:

36. In *Datar Switchgears Ltd. v. Tata Finance Ltd.*, which was affirmed in *Punj Lloyd Ltd. v. Petronet M.H.B. Ltd.* it was held that once a minimum of 30 days has expired and a petition is filed in the Court, the appointing authority loses the right to make the appointment. Therefore, the Appellant B.S.N.L. has now lost its right to appoint any Arbitrator for settling the disputes under the agreement.

20. Thus, in view of aforesaid settled legal position since the Respondents did not appoint Arbitrator according to the arbitration clause provided under the agreement/ contract bond entered into between the parties within a period of 30 days of demand for appointment of Arbitrator and even by the time the applicant approached this Court twice by filing application for appointment of Arbitrator. Therefore, I have no hesitation to hold that now the Respondents have forfeited their rights to appoint Arbitrator provided under arbitration clause in the agreement in question and Chief Justice of this Court or designated Judge is empowered to appoint sole Arbitrator on his discretion under the provisions of Section 11(6) of the Act as the conditions precedent for exercise of such power

are fully satisfied. I, accordingly appoint Hon"ble Mr. Justice Raja Ram Yadav (Retd.) as sole Arbitrator under the provisions of Section 11(6) of the Act. The parties are directed to submit their dispute before the Arbitrator and the Arbitrator so appointed shall assume the charge of his office upon being submitted a certified copy of this order before him.

21. Now further questions arise for consideration that what would be the remuneration of Arbitrator appointed by this Court and who will bear the remuneration of Arbitrator, cost and expenses of arbitration proceedings? In this connection, it is to be noted that under the arbitration agreement referred hereinbefore although the cost and expenses of arbitration proceedings are required to be paid as determined by the arbitral Tribunal and the expenses incurred by each party in connection with the preparation, presentation etc. of its proceeding on its behalf shall be borne by each party itself but having regard to uniformity in the matter as a practice of this Court. I would like to refer some earlier orders passed by Sister Bharati Sapru, (J.) designated Judge of this Court in exercise of power u/s 11(6) of the Act. In Arbitration Application No. 89 of 2006, Dharampal Satyapal Ltd. v. Dinesh Enamelled Wire Industries (P.) Ltd., while appointing Hon"ble Mr. Justice M.C. Agarwal (Retd.) as sole Arbitrator on 17.11.2009 Hon"ble Bharati Sapru (J.) has fixed the remuneration of Arbitrator as Rs. 20,000 per sitting alongwith 15% clerkage to be paid to him in advance before each sitting. The remuneration of Arbitrator was directed to be shared equally by both the parties. In another Case No. 45 of 2009, M/s. Shanti Constructions v. Greater N.O.I.D.A. Industrial Development Authority and others, decided on 26.11.2009 Hon"ble Bharati Sapru (J.) while appointing Hon"ble Mr. Justice M.C. Agarwal (Retd.) as sole Arbitrator has fixed the remuneration of Arbitrator at a rate of Rs. 25,000 per sitting as bare minimum. In another Case No. 53 of 2009 on the matter of M/s. Superior Films Pvt. Ltd. v. Mahagum India Pvt. Ltd., while appointing Hon"ble Mr. Justice R. K. Gulati (Retd.) as sole Arbitrator vide order dated 25.11.2009 Hon"ble Bharati Sapru, J. has fixed his remuneration at the rate of Rs. 25,000 per sitting as bare minimum, which was to be shared equally by both the parties.

22. In this view of the matter this Court fixes the remuneration of sole Arbitrator so appointed at a rate of Rs. 25,000 per sitting as bare minimum. The cost and expenses of arbitration proceeding shall be paid to the Arbitrator in addition thereto as fixed by the Arbitrator and further modalities of such payment shall be fixed by the Arbitrator so appointed with the negotiation of the parties. The remuneration of Arbitrator and cost of arbitration proceeding shall be borne equally by both the parties. However, the expenses incurred by each party in connection with the preparation and presentation of its proceeding on its behalf shall be borne by each party itself. The Arbitrator would be at liberty to fix avenue/place of his sitting either at his own discretion or with the negotiation of the parties and the Arbitrator shall proceed with the arbitration proceeding in accordance with the provisions of the Act.

23. With the aforesaid observation and direction, the application stands allowed.