

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Arbitration Application No. 31 of 2021**

M/s National Collateral Management Services Limited a Limited Company duly incorporated under the Companies Act, 1956 having its registered office at Lodha Supremus, 5th Floor, Unit No. 505 to 509, Off JVLR, Kanjurmarg (E), Mumbai-400042 and its Corporate Office at IFFCO, Tower, Tower-1, Wing-B, 5th Floor, Sector 29, Gurugram-122001 through its authorized Signatory, Tribhuwan Singh Bora, Aged about 42 years, son of Sri Diwan Singh Bora, Resident of House No. B-99, Jalvayu Vihar, Near Shivam Hospital, Sector 30, P.O Gurgaon, P.S. Gurgoan, District:- Gurgaon, Haryana-122001.

... ..Petitioner

Versus

M/s Kunj Bihari Food Processing Pvt Ltd, situated at, Sukrigarh, Behind Lari High School P.O Ramgarh, P.S Ramgarh, District, Ramgarh through its Director, Vinay Kumar Agarwal.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Applicant : Mr. Vikas Pandey, Advocate
For the Respondent : Mr. Rohit, Advocate

05/Dated 28th July, 2022

1. Mr. Rohit, learned counsel, has submitted that in pursuance to the notice issued by this Court on 06.06.2022, appearance has been made by filing Vakalatnama.
2. This Court, after taking into consideration the aforesaid submission and with the consent of the learned counsel for the parties, has taken up the matter for hearing and heard the same on merit.
3. Accordingly, the matter has been heard and decided on merit.
4. The instant application is under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking a direction for appointment of independent Arbitrator for resolution of dispute in view of arbitration

clause as contained under Clause 19 of the Milling Agreement dated 30.11.2017.

5. The case as per the pleading made on behalf of the petitioner-applicant reads as under:

The petitioner/applicant is engaged in business of procurement of paddy under MSP Scheme from farmers at sector level procurement centers and delivery of resultant custom milled rice on principal to principal basis in whole country including the State of Jharkhand.

The petitioner/applicant entered into Milling Agreement dated 30.11.2017 with the respondent and clause 5(f) of the said milling agreement stipulates that the respondent has to complete the milling of paddy within a period of seven working days from the date of lifting of paddy.

It is the case of the petitioner/applicant that the respondent has not adhered to the aforesaid milling agreement and rice was deposited much after the stipulated time.

It is the further case of the petitioner/applicant that since the dispute arose, therefore, the process of settlement has been sought to be initiated by filing due application before the concerned respondent but having not been acted upon, the request for appointment of arbitrator has been made as would appear from Annexure-2 appended to the application but even thereafter, the arbitrator has not been appointed, therefore, the instant application has been filed.

6. Mr. Rohit, learned counsel has put his appearance by filing vakalatnama on behalf of the respondent and submits by raising an issue that the petitioner/applicant has approached before the JMFSC Council in the similar circumstances, therefore, he may be directed to approach before the Council so that there may not be any conflicting order.
7. On this, Mr. Vikas Pandey, learned counsel for the petitioner/applicant has submitted that even if the respondent has approached before the Council, that does not held this application not maintainable since there is arbitration clause under Clause 19 of the contract and once the parties

have agreed for referring the dispute for its resolution, the parties have to abide by the terms of the contract, as such, merely because the respondent has approached before the Council, the respondent cannot be allowed to take the issue of holding this application not maintainable.

8. He further submits that even otherwise also, it would be evident from the provision as contained in Micro, Small and Medium Enterprises Development Act, 2006 that there is no provision to file counter-claim, as such, on this ground also, this application cannot be held to be not maintainable.
9. This Court has heard the learned counsel for the parties, perused the documents available on record, more particularly, Arbitration Clause 19, which reads as under:

“19. DISPUTE RESOLUTION

- a) *Any and all claims disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration through an arbitrator to be mutually agreed on. In the event of disagreement, each party will appoint one arbitrator. The arbitration proceeding shall be held in Ranchi in accordance with the provisions of the Arbitration and Conciliation Act, 1996.*
- b) *The decision of the arbitrator shall be final and binding upon the Parties both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The expenses of the arbitrator shall be shared equally by the Parties, and each Party shall bear its own legal costs.”*

It is, thus, evident from the arbitration clause as under Clause 19(a) thereof which contains a condition for resolution of dispute that any and all claims disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration through an arbitrator to be mutually agreed on. In the event of disagreement, each party will appoint one arbitrator. The arbitration proceeding shall be held in Ranchi in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is, thus, evident from the bare perusal of the dispute resolution that in case of any dispute arising in between the parties, the

first course to be resorted to is the mechanism of mutual settlement by appointing arbitrator.

10. The petitioner/applicant, admittedly, made request for appointment of arbitrator in a situation where the dispute has arisen as would appear from Annexure-2 appended to the instant application but the admitted position is that no arbitrator has been appointed.
11. The question has been raised by the learned counsel for the respondent that the similar issue is pending for adjudication before the Council constituted under the MSME Act, 2006, therefore, the instant application is not maintainable.
12. This Court, is not in agreement with such submission reason being that even accepting that the similar matters are pending before the Council, the same cannot be construed to be a ground for holding this application not maintainable. The reason for coming to such conclusion is that under Section 11(6) of the Arbitration and Conciliation Act, 1996 is supposed to see the arbitration clause contained in the agreement/contract entered in between the parties. The matter is otherwise different if there is no arbitration clause in the agreement then what has been submitted by the learned counsel for the respondent can be accepted, but, that is not the fact herein since there is specific arbitration clause as under Clause 19 of the Milling Agreement dated 30.11.2017, as quoted and referred above.
13. This Court, is of the view that merely because one of the parties, has approached before the Council, the instant application cannot be held to be not maintainable rather the instant application is well maintainable since there is arbitration clause for resolution of the dispute by appointing arbitrator.
14. It is also admitted that request for appointment of arbitrator has been made but even after lapse of the statutory period of 30 days, no arbitrator has been appointed, therefore, this Court is of the view that it is a fit case where the power conferred to this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 is required to be exercised for appointment of Arbitrator, considering Clause 19 of the contract.

15. Learned counsel for the parties have suggested the name of Hon'ble Mr. Justice (Retd.) D.K. Sinha, High Court of Jharkhand to act as an Arbitrator.
16. Accordingly, this Arbitration Application is being disposed of by appointing Hon'ble Mr. Justice (Retd.) D.K. Sinha, High Court of Jharkhand, presently residing at D/4001, Green Residency, Nalanda Colony, Budha Vihar, Bariyatu, Ranchi-834001, as Arbitrator for resolution of dispute.
17. Needless to say that the parties will be at liberty to raise all the legal issues for its consideration by the Arbitrator, in accordance with law.
18. It is expected that the Arbitrator will conclude the proceeding within the timeframe as provided under the Act.
19. Learned Registrar General of this Court is directed to send a copy of the entire records of this case along with entire order sheet with this order to the learned Arbitrator forthwith.
20. Both the parties shall co-operate in the hearing before the learned Arbitrator and they shall not ask for any unnecessary adjournment.
21. The instant arbitration application is allowed and accordingly, disposed of.
22. So far as the I.A. No. 5102 of 2021 is concerned, since the matter is being referred before the Arbitrator, therefore, this Court is not passing any order on merit in the interlocutory application. However, the petitioner/applicant is at liberty to raise such issue before the Arbitrator for its consideration.
23. In consequent to disposal of this arbitration application, I.A. No.5102 of 2021 also stands disposed of.

(Sujit Narayan Prasad, J.)