

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**A. Appl. No. 32 of 2023**

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M/s Smart Chip Private Limited a company incorporated under the Companies Act, 1956, having its registered office at office no. 12C, D Wing, 12<sup>th</sup> Floor, MBC Park, Kasarvadavali, Ghodbunder Road, PO Kasarvadavali, PS Kasarvadavali, Thane (W) District Thane, Maharashtra, India-400615, and corporate office at Plot no. 1-A, Sector 73, NOIDA, Uttar Pradesh 201307 acting through its power of attorney holder, Mr. Ashish Gupta, s/o Sh. N.C. Gupta, aged about 38 years, presently working with the petitioner company as General counsel, having its registered office at office no. 12C, D Wing, 12<sup>th</sup> Floor, MBC Park Kasarvadavali, Ghodbunder Road, PO Kasarvadavali, PS Kasarvadavali Thane (W), District Thane, Maharashtra, India-400615

..... **Petitioner**

*Versus*

Jharkhand State Cooperative Bank Limited, a cooperative bank having its office at 3<sup>rd</sup> Floor, Marketing Board Building, Itki Road, Hehal, Ranchi, Jharkhand 834005

..... **Respondent**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE**

For the Petitioner : Ms. Khushboo Kataruka, Advocate  
Mr. Shubham Kataruka, Advocate  
Mr. Ushma Pandey, Advocate  
For the JSCB : Mr. Mrinal Kanti Roy, Advocate  
Mr. Rishi Ranjan Vats, Advocate

**Order No.06/ Dated: 17<sup>th</sup> May 2024**

This arbitration application has been filed by M/s Smart Chip Private Limited for appointment of sole Arbitrator under section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, AC Act) for resolution of the disputes between the parties.

2. Mr. Mrinal Kanti Roy, the learned counsel for the respondent-Cooperative Bank has raised an objection to the maintainability of this Arbitration Application on the ground that the applicant-Firm being an agent shall be governed under section 48 of the Bihar Cooperative Societies Act, 1935 and it is required to approach the Registrar of the Cooperative Societies for initiating a dispute resolution proceeding.

3. Mr. Mrinal Kanti Roy, the learned counsel for the Cooperative Bank refers to "*Indu Builders v. State of Jharkhand*" 2003 (3) JCR 360 (JHR) to fortify the stand taken by the Cooperative Bank that the present

Arbitration Application filed under section 11(6) of the AC Act is not maintainable. The learned counsel relies on the observations in paragraph no. 9 which reads as under:

“9. In the present case, apart from the fact that Sujit Lahiri through whom the petitioner had approached this Court, is a member of the Housing Cooperative Society, the present dispute touches the business of the Society. Under Section 48 (1) of the Bihar Cooperative Societies Act, 1935, if any dispute touching the business of a registered Society between the Society or its Managing Committee and any past or present Member, Agent or Servant of the Society arises, the Registrar Cooperative Society has jurisdiction to decide the dispute.

In the present case, the petitioner is working as an Agent of the Cooperative Society to construct houses for its members over the land which belongs to the members. In view of the aforesaid provisions of law i.e. Section 48 (1) of the Cooperative Societies Act, 1935 as also the Clause (10) of the memorandum of understanding dated 17<sup>th</sup> July, 2002, it is always open for the Registrar, Cooperative Societies to take up the matter and decide the dispute.

Similar was the view expressed by the Supreme Court in the case of D.M. Cooperative Bank v. Dalichand, reported in AIR 1969 SC 1320.”

4. On a mere glance at the decision in “*Indu Builders*”, it becomes apparent that the observations in paragraph no. 9 of the said order were made in a different context and fact-situation. This Court is not required to narrate the facts in “*Indu Builders*” and the objection raised by the Cooperative Bank shall not detain this Court in view of the decision by the Hon’ble Supreme Court in “*Supreme Cooperative Group Housing Society v. H.S. Nag & Associates (P) Ltd.*” (1996) 9 SCC 492. Ms. Khushboo Kataruka, the learned counsel for the applicant-Firm submits that one of the objections raised in “*Supreme Cooperative Group Housing Society*” was that the dispute raised by the cooperative society was arbitrable under Delhi Cooperative Societies Act, 1972 and the said objection was overruled by the Hon’ble Supreme Court observing that:

“4... Undoubtedly, jurisdiction to arbitrate the dispute is founded upon an agreement entered with *consensus ad idem* under which the parties excluded established courts and submitted to the jurisdiction of the arbitrator for settlement of differences and disputes having arisen thereunder. Otherwise, the court is devoid of jurisdiction to refer such disputes under section 20 for arbitration. It is seen that the above-quoted terms of the agreement and clause 32 of the contract read together clearly indicate that the award of the work during the course of execution is a part of the agreement originally entered into. Therefore, clause 32 of the agreement containing settlement of disputes by arbitration is an

arbitration agreement within the meaning of Section 2(a) of the Act. Therefore application under Section 20 would be maintainable. We do not find any substance in the special leave petition.”

5. Having thus decided the objection raised by the Cooperative Bank, this Court has formed a prima-facie opinion that clause-8 contained in “Request for Proposal for Supply, Installation, Commissioning and Management of Micro ATM and Allied Software” is an arbitration clause which shall govern the parties in dispute.

6. Clause-8 which appears with the heading “Governing Laws and Disputes” provides as under:

“8. Governing Laws and Disputes

All disputes or differences whatsoever arising between the parties out of or in relation to the construction, meaning and operation or effect of these Tender Documents or breach thereof shall be settled amicably. If, however, the parties are not able to solve them amicably, the same shall be settled by arbitration in accordance with the applicable Indian Laws, and the award made in pursuance thereof shall be binding on the parties. The Arbitrator/Arbitrators shall give a reasoned award. Any appeal will be subject to the exclusive jurisdiction of courts at Ranchi.”

7. Briefly stated, the applicant-Firm is a Company incorporated under the Companies Act, 1956. Pursuant to a “Request for Proposal floated by the Cooperative Bank on 29<sup>th</sup> June 2017 for supply, installation, commissioning and management of Micro ATM and allied software to be used as field devices for carrying out financial inclusion transactions (like Biometrics AEPS & Rupay Card) at approximately 2000 villages/locations across the State of Jharkhand”, the applicant-Firm submitted its bid and it was declared successful. This is not in dispute that five work orders were issued to the applicant-Firm between 17<sup>th</sup> August 2017 and 25<sup>th</sup> May 2018. After some dispute cropped up in relation to the release of payment and the non-supply of materials, there was exchange of emails and letters between the parties. This is also an admitted position that on 5<sup>th</sup> September 2022 the demand notice was given to the Cooperative Bank and a meeting was held on 11<sup>th</sup> October 2022 for amicably settling the dispute. Lastly, the applicant-Firm issued a notice on 19<sup>th</sup> September 2023 under section 21 of the AC Act.

8. After having gone through the objections taken by the Cooperative Bank, this Court has formed an opinion that the dialogue

between the applicant-Firm and the Cooperative Bank had come to a dead end. Under section 11 of the AC Act, in cases where the parties did not agree to a procedure for appointment of an Arbitrator for resolving the dispute on making an application by the aggrieved party the power under sub-section 6 to section 11 of the AC Act is exercisable by the Chief Justice of the High Court or a Judge nominated by the Chief Justice. There is compliance of section 21 of the AC Act and in view of the judgment in “*N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*” (2023) 7 SCC 1 this Court is not required to look beyond except existence of the arbitration clause at this stage; no more no less.

9. Therefore, exercising the power under section 11(6) of the AC Act, this Court requests Mr. Saibal Kumar Laik, a practicing Advocate of the High Court of Jharkhand to act as the sole Arbitrator for resolving the dispute between the parties. The learned Arbitrator may enter Reference within 30 days from the communication of a copy of this order by the applicant-Firm. It is agreed between the parties that the fee payable to the learned sole Arbitrator shall be as per Schedule-4 of the AC Act.

10. Needless to indicate that the seat of the learned Arbitrator shall be at Ranchi.

11. This Arbitration Application is allowed.

**(Shree Chandrashekhar, A.C.J.)**

*Tanuj*