

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 21 of 2023

Tata Steel Utilities and Infrastructure Services Limited, a company registered under the provisions of Indian Companies Act, 1956 having its office at Sakchi Boulevard Road, P.O. and P.S. Bistupur, Town-Jamshedpur, District- East Singhbhum, representative through Jai Pushpit Pallav, Chief Divisional Manager (Legal), aged about 46 years, son of Shri J.P.N. Das, resident of Flat No. C-5/3, Eden Park, Bhatia Basti, Kadma, Jamshedpur, P.O. & P.S. Kadma, District – East Singhbhum. **...Petitioner**

Versus

Jharkhand Urban Infrastructure Development Company Limited through its Project Director (WS), having its office at 3rd Floor, Pragati Sadan, RRDA Building, Kutchary Road, P.O. GPO, P.S. Kotwali, District Ranchi, Jharkhand. **... Respondent**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Ankit Vishal, Advocate
Mr. Amitabh Prasad, Advocate
For the Respondent : Mr. Krishna Murari, Advocate

Order No. 5/Dated: 21st June 2024

This Arbitration Application has been filed by Tata Steel Utilities and Infrastructure Services Limited (in short "TSUISL") seeking appointment of an Arbitrator under sub-section (6) to section 11 of the Arbitration and Conciliation Act, 1996.

2. The TSUISL has pleaded that it was allotted the work under Tender Notice dated 1st July 2017 for "Chakradharpur Urban Water Supply Scheme under JUIDCO Ltd." and an agreement was executed on 27th December 2017. Under the agreement, the subject work was to be completed within 24 months, i.e., by 26th December 2019. The TSUISL has pleaded that there was delay beyond the scheduled date of completion due to the reasons not attributable to it and, therefore, extension of time was granted by the Jharkhand Urban Infrastructure Development Company Limited (in short "JUIDCO") and the scheduled completion date was extended till 26th April 2022. The TSUISL has made allegations that the JUIDCO did not provide encumbrance-free site, right of way and No Objection Certificate to it and in this regard several letters were

given to the JUIDCO. It has pleaded that vide letters dated 23rd August 2019 and 9th September 2019 the Project Director (Technical), JUIDCO was informed that it would not be able to continue with its obligation after expiry of the contract period on 26th December 2019, due to failure on the part of the JUIDCO. It has further pleaded that it requested the JUIDCO to clear the outstanding dues against the R.A. Bills and, infact, on 8th February 2023 informed the Project Director (Technical), JUIDCO that it was unable to carry out its obligations under the agreement on account of failure on the part of the JUIDCO to provide encumbrance-free land and if the outstanding dues of Rs. 12,22,15,222.53 with 12% interest per annum is not released within 30 days, the agreement shall stand terminated. The TSUISL has pleaded several other facts which are not really required to be recorded in the present proceeding and suffice it would be to record that the TSUISL received last payment from the JUIDCO on 11th November 2020 and invoked arbitration clause through letter dated 24th May 2023. The TSUISL nominated Mr. Ashok Kumar Parija, the learned Senior Advocate as the sole Arbitrator for resolution of the dispute between the parties but its proposal was not accepted by the JUIDCO; according to the TSUISL, it had terminated the agreement through its letter dated 8th February 2023.

3. In paragraph no.16 of the counter-affidavit, the JUIDCO has taken the following stand:

“16. That in view of the aforesaid facts and circumstances, where there is no dispute with respect to any fact regarding execution of work by the Petitioner nor there is any dispute regarding admissibility of the claim of the writ petition, thus There Is No Arbitrable Issue involved in the matter and therefore, this arbitration petition is fully misconceived and non-maintainable against the sole Respondent JUIDCO as the actual cause of action lies against the DMFT, West Singhbhum. Consequently, the remedies of the Petitioner lie elsewhere to seek mandamus more particularly against the DMFT, West Singhbhum for release of the fund to the Respondent JUIDCO so as to ensure back to back payment to the writ Petitioner wherein the Respondent JUIDCO will also get a centage/handling charge at the rate of average 7 percent”.

4. There is no dispute that an agreement was signed on 27th December 2017 between the TSUISL and JUIDCO.

5. The agreement executed between the TSUISL and JUIDCO at page-51 of the paper-book recites as under:

AGREEMENT FOR:

“Chakradharpur Urban Water Supply Scheme under JUIDCO Ltd.”

AGREEMENT NUMBER: 238- (JUIDCO)

This Agreement, made the 27 day of December, 2017

BETWEEN

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO Ltd.), a company owned by Government of Jharkhand, incorporated under (Indian) Companies Act, 1956 having its Registered office at Principal Secretary, Room NO. 411, Urban, Development Department, Project Building, Dhurwa, Ranchi-834004 and presently working at 3rd Floor, Pragati Sadan, Kutchery Chowk, Ranchi – 1, Jharkhand, (hereinafter called “the Employer”) its authorized representative General Manager (WR) S.K. Sahu of the FIRST PART;

AND

M/s Jamshedpur Utilities & Service Company Limited (JUSCO) having its Registered office at Sakchi Boulevard Road Northern Town, Bistupur, Jamshedpur-831001 East Singbhum (hereinafter called “the Contractor” of the other part) its authorized representative Mr. Ayathamraju Bala Subramanyam of the SECOND PART;

6. This is well-settled that in an application under section 11(6) of the Arbitration and Conciliation Act, 1996, the Court is required to see whether there is an arbitration clause which as per section 7 should be a document in writing signed by the parties. In the opinion of this Court, in view of the judgment in “*N.N Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*” (2023) 7 SCC 1, the present Arbitration Application is maintainable.

7. This Court, therefore, appoints Mr. Devendra Kumar Tiwary, IAS (Retd.), a former Chief Secretary, Government of Jharkhand as the Arbitrator to adjudicate the dispute between the parties. The learned Arbitrator may enter reference within 30 days of the communication of this order. The fee of the learned Arbitrator shall be as per Fourth Schedule to the AC Act. This is also indicated that seat of the arbitration shall be at Ranchi and the learned Arbitrator shall be at liberty to change the venue for arbitration with the consent of the parties, who shall provide all necessary logistics if so desired by him.

8. Arbitration Application No.21 of 2023 is allowed.

(Shree Chandrashekhar, A.C.J.)