



2026:CGHC:4418

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 51 of 2025**

Nova Iron and Steel Limited Through Its Director and Authorized Representative
Mr Dinesh Kumar Yadav, Having Registered Office At Village Dagori, Tehsil
Belha, District Bilaspur, (C.G.) 495224

... Applicant**versus**

KMAG International Through Its Authorized Representative Having Registered
Office At Shop No. 1, Moolchand Complex, Old Bus Stand, District Bilaspur,
Chhattisgarh

... Respondent

For Applicant	:	Mr. Rishabh Garg, Advocate. (through video-conferencing).
For Respondent	:	Mr. Arjit Tiwari, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Order on Board****27.01.2026**

1. This is an application under Section 11(5) read with Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for short, the Act of 1996*) for appointment of an Arbitrator.
2. The facts, in brief, as projected by the applicant are that the applicant is a Company incorporated under the relevant provisions of the Companies Act, 1956. On 10.05.2023, the applicant and the respondent entered into a Railway Siding Agreement (*for short, the agreement*) for Railway Siding PSNS14322913, for a period of 3 years upon monthly rent payment. By way of this agreement, the respondent was appointed for providing operation and maintenance services with regard to the siding. The respondent was handed



over the physical possession of the site on 01.07.2023 pursuant to the agreement after duly complying with its obligations under the agreement. On 13.07.2023, a notice was also issued by the Environment Conservation Board (*for short, the Board*) with respect to an inspection conducted by them on the site on 15.06.2023, wherein the Board pointed out several deficiencies observed at the siding and non-compliance with the requisite environmental norms. The notice clearly mentioned that in the event of failure to rectify the deficiencies and ensure compliance with the relevant environmental norms, dire consequences such as closure of industry etc, will follow. The said notice was shared by the applicant after receiving it on 18.07.2023 with the respondent for necessary compliance(s). Despite being duly informed about the deficiencies pointed out in the siding by way of the Notice dated 13.07.2023 and being cognizant of the consequences of non-action, the respondent failed to take any substantial steps for curing the aforesaid deficiencies. Consequently, the applicant issued a show cause notice on 05.08.2023, seeking to terminate the agreement on account of the respondent's non-compliance with the environmental norms, stating that such non-compliance amounted to negligence and misconduct under the Agreement, thereby warranting termination of the same. The respondent replied to this letter, vide letter dated 11.08.2023, contending that it was not responsible for the deficiencies observed at the siding by the Board. On 19.08.2023, the applicant issued a termination order, stating that the agreement would stand terminated with effect from 31.08.2023. In response, the respondent sent another letter dated 25.08.2023, yet again disavowing any responsibility for any deficiencies/anomalies pointed out by way of the notice dated 13.07.2023. Aggrieved by the termination order issued by the applicant, the respondent approached the learned Commercial Court, by way of a Section 9 application bearing MJC No.44/2023 {K MAG



International v Nova Iron and Steel Ltd & Ors seeking injunction on the effect and operation of the termination order dated 19.08.2023. The learned Commercial Court held that the respondent was not responsible for the violations, breaches, pointed out by way of the inspection on 15.06.2023, as the same occurred prior to the respondent coming into possession of the siding. Accordingly, the learned Commercial Court, vide order dated 07.09.2023, held the termination order dated 19.08.2023 to be unjust and stayed the effect of the termination till the decision on validity of termination by an arbitral tribunal. The relevant portion of the said order is reproduced hereunder for ease of reference: -

17-in view of the aforementioned discussions, it is ordered that the effect of termination of lease deed shall remain stayed till the validity of termination is decided by the arbitral tribunal to be constituted under the clauses 15 of the lease deed. Parties shall bear their own costs"

3. The applicant, aggrieved by the order of the learned Commercial Court, approached this Court, by way of an appeal bearing Arbitration Appeal No. 43/2023. This Court, vide order dated 13.12.2023, upheld the order passed by this Court. Thereafter, on 06.02.2024, the respondent sent a notice invoking the arbitration clause of the agreement, to which the applicant replied vide letter dated 04.03.2024. Another notice dated 30.05.2024 was sent by the respondent for commencement of arbitral proceedings, which was replied to by the applicant vide letter dated 10.07.2024. In August 2024, the respondent filed a Section 11(6) application before this Court seeking appointment of arbitrator for adjudication of the disputes between the parties. The said application was disposed of, vide order dated 17.09.2024, by appointing Justice (Retd.) Vijay Kumar Shrivastava as the Sole Arbitrator, Pursuant to this order, the arbitral proceedings commenced in the month of October 2024. As the effect of termination order dated 19.08.2023 was stayed



by the learned Commercial Court vide Order dated 07.09.2023, the agreement continued to be in force, with the respondent continuing in possession of the siding. However, there has been continued failure on the part of the respondent to fulfill its obligations under the agreement, brought to the fore by several instances as enumerated below.

4. According to the agreement, the respondent was under an obligation to comply with all the applicable laws, rules and regulations, including environmental and railway norms to ensure the operation of the siding in a safe, clean, efficient and cost-effective manner. During the operation of the siding by the respondent, periodic inspections were conducted by the South East Central Railways (SECR) on 11.03.2024, 10.06.2024, 09.09.2024, 30.11.2024 and 12.12.2024, which have constantly revealed significant deficiencies in the siding such as presence of excessive flaky aggregate, missing ERC, excessive coal dust etc. Despite numerous letters of compliance sent by SECR which were duly shared by the applicant with the respondent, the respondent has repeatedly failed to rectify the defects and has failed to conduct itself as per the Standards of Performance as envisaged under Clause 7 of the Agreement. While the respondent has not performed the maintenance obligations, it has made false claims before SECR of having undertaken the necessary maintenance work, which have been strongly refuted by SECR vide its letter dated 30.11.2024. In fact, lack of proper maintenance work on the part of the respondent also led to a mishap, wherein a loaded wagon got derailed at the Siding. The Joint Finding Report of the incident issued by SECR also determined the cause of derailment to be the deficiencies in the maintenance of the track, for which the respondent was responsible. Such flagrant breach of obligations on the part of the respondent has adversely impacted the reputation of the applicant and exposed the applicant to potential penalties for non-compliance of



environmental and railway norms, in addition to creating safety issues at the Siding, in respect of which, the applicant shall raise its claim and damages before the Hon'ble Arbitrator. The respondent has also violated Clause 4 of the agreement to make monthly lease rentals by continuously defaulting in the payment of the monthly rent of Rs. 30,00,000. While the respondent had to pay the rent on or before the 10th of every month, ever since the commencement of the agreement, the respondent has failed to make timely payments and has completely ceased the payment of rentals since May 2024, thereby giving right to the applicant to forthwith terminate the agreement as per Clause 14 of the agreement.

5. Mr. Garg further submits that the applicant has been regularly following up for the settlement of the outstanding rent and has sent several communications to the respondent to this effect on 22.03.2024, 24.04.2024, 30.05.2024, 05.06.2024, 18.07.2024, 15.08.2024, 18.09.2024, 19.10.2024, 28.11.2024 and 19.12.2024, to mention a few, which the respondent failed to respond to as well as to make the payment of the lease rentals. The monthly rental amount pending since May, 2024 continued to accrue until the month of August 2025, since that was when the respondent vacated the site and handed over the possession of the same to the applicant. Besides violating the agreement by way of its wrongful omissions, the respondent has also engaged in fraudulent activities with respect to the siding by fabrication of documents such as agreements, indemnity bonds and no-objection letters for addition of three entities, namely M/s Mahendra Sponge & Power Ltd., M/s Super Ispat Raipur Pvt. Ltd., M/s Mahendra Power Pvt. Ltd. as co-users to the siding while the respondent was requesting the applicant for the said consent, on non-grant of the same, the respondent resorted to unlawful ways to attain its objective. Such misrepresentation and grave misconduct on the part of the respondent has led to complete breach of trust between the parties. The



aforesaid breaches on the part of the respondent led the applicant to terminate the agreement dated 10.05.2023 vide termination letter dated 22.02.2025. After the termination of the Agreement on 22.02.2025, the parties filed respective petitions before the Learned Commercial Court, Raipur under Section 9 of the Arbitration and Conciliation Act, 1996, which came to be disposed of vide order-dated 20.05.2025.

6. In the meantime, the applicant invoked Clause 15 of the Agreement which provides for Arbitration. The same is reproduced hereinbelow:

15. GOVERNING LAW, JURISDICTION ARBITRATION AND

15.1 This Agreement shall be governed by the laws of India. The courts at Bilaspur shall have exclusive jurisdiction in relation to any dispute arising out of this Agreement.

15.2 The parties agree to use their best efforts, through good faith negotiations, to resolve any dispute that may arise under this Agreement. If the dispute is not resolved by this method within 30 days, it will be settled by arbitration in accordance with the 1996 ray re-enactments thereof The seat of Arbitration shall be Raipur, India and the language of arbitration shall be English.”

7. In terms of the aforesaid Clause 15 of the agreement, the applicant sent a notice dated 01.03.2025 to the respondent to settle the dispute amicably by negotiations. However, the respondent chose to not respond to the same. Thereafter, vide notice dated 16.08.2025, the applicant invoked arbitration under S. 21 of the Act of 1996 for adjudication of disputes between the parties, which *inter alia* include, (a) recovery of Rs 3,05,08,310/-; (b) declaration that the Respondent is in breach of the terms of the agreement due to events that arose after the stay orders passed by the Hon'ble Courts; (c) damages for loss of



opportunity, reputation and goodwill, and lost profits, (d) reimbursements for payment of penalties, fines, and reparations, among others, that the applicant has suffered on account of such breach. The respondent replied to the said notice vide reply dated 25.08.2025 consenting to adjudication of disputes via Arbitration.

8. Mr. Garg submits that the parties have agreed to reference of disputes to Hon'ble Shri Justice V.K. Shrivastava (Retd) as the Sole Arbitrator. However, they seek the reference of the disputes by intervention of this Hon'ble Court. A valid arbitration agreement exists between the parties as per Clause 15 of the Agreement. There is no dispute between the parties regarding existence of the Arbitration clause or the fact that are disputes between the parties which require adjudication by an Arbitrator. This Hon'ble Court has territorial jurisdiction to entertain the present application under Section 11 of the Arbitration and Conciliation Act, 1996 because the agreement has entered into between the parties in the State of Chhattisgarh. The present application has been moved within the stipulated period of limitation per Article 137, Limitation Act, 1963.
9. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
10. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice V.K. Shrivastava, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.
11. Accordingly, with the joint consensus of learned counsel appearing for the parties, this Court appoints Hon'ble **Mr. Justice V.K. Shrivastava**, a retired Judge of this High Court, to act as the Sole Arbitrator for resolving the dispute



between the parties.

12. The Registry is directed to communicate this order to Hon'ble Mr. Justice V.K. Shrivastava in the proper address.

13. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

14. These arbitration request petitions, accordingly, stand **allowed**.

**Sd/-
(Ramesh Sinha)
Chief Justice**

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