

## IN THE HIGH COURT OF JHARKHAND AT RANCHI

### Arbitration Application No. 12 of 2020

-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) having its Registered Office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053 represented through its duly Authorized Officer namely AshviniParashar aged about 52 years, S/o Sh. B.D. Parashar R/o. Flat No. A-84, IDC Apartments, Plot No. 8c, Sector-11, Dwarka, New Delhi-110075.

... ..**Petitioner**

### **Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) through its Director having its Offices at Second Floor, VasundharaMegha Mart, Near ArgoraChowk, Ranchi, Jharkhand, -834002 and also at Third Floor RRDA Building, KutcheryChowk, P.O. -KutcheryChowk, P.S. Kotwali, Ranchi, Jharkhand-834001.

.....**Respondent**

### **With**

### Arbitration Application No. 14 of 2020

-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chough, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... ..**Applicant**

### **Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor, Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadhan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical)

..... **Respondent**

**With**  
**Arbitration Application No. 15 of 2020**  
 -----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chough, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... .. **Applicant**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor, Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical)

..... **Respondent**

**With**  
**Arbitration Application No. 16 of 2020**  
 -----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chough, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... .. **Applicant**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor,

Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical) ..... **Respondent**

**With**  
**Arbitration Application No. 17 of 2020**  
-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chugh, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... ... **Applicant**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor, Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical) ..... **Respondent**

**With**  
**Arbitration Application No. 18 of 2020**  
-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chugh, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... ... **Applicant**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor, Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical) ..... **Respondent**

**With**

**Arbitration Application No. 19 of 2020**

-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) a Company a Registered and incorporated under Companies Act, 1956 having its office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053, India through its authorized representative namely Harvinder Pal Singh Chugh, son of Sh. Manmohan Pal Singh Chugh, resident of 217, GH-4, Kaveri Apartments, Sector 21D, Faridabad (Haryana), P.O. 121012, P.S. Sector 21D.

... .. **Applicant**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) A company incorporated under Companies Act, 1956 and owned by Government of Jharkhand, having its registered office at Urban Development and Housing Department, 4<sup>th</sup> Floor, Project Building, Dhurwa, P.O & P.S. Dhurwa, Town and District Ranchi, Jharkhand, and also at 3<sup>rd</sup> Floor, PragatiSadan (RRDA Building) KutcharyChowk, P.O & P.S. NCDC Town and District Ranchi, Ranchi-834001 Jharkhand through Shri Suresh Paswan Project Director (Technical) ..... **Respondent**

**With**

**Arbitration Application No. 20 of 2020**

-----

Delhi Integrated Multi Modal Transit System Limited (DIMTS) having its Registered Office at 8<sup>th</sup> Floor, Block-1, Delhi Technology Park, Shastri Park, Delhi-110053 represented through its duly Authorized Officer namely

AshviniParashar aged about 52 years, S/o Sh. B.D. Parashar R/o. Flat No. A-84, IDC Apartments, Plot No. 8c, Sector-11, Dwarka, New Delhi-110075.

... .. **Petitioner**

**Versus**

Jharkhand Urban Infrastructure Development Company Limited (JUIDCO) through its Director having its Offices at Second Floor, VasundharaMegha Mart, Near ArgoraChowk, Ranchi, Jharkhand, -834002 and also at Third Floor RRDA Building, KutcheryChowk, P.O. -KutcheryChowk, P.S. Kotwali, Ranchi, Jharkhand-834001.

..... **Respondent**

-----  
**CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
-----

For the Petitioner :Mr. Bhagat Singh, Advocate  
[In A.A. Nos. 12 & 20 of 2020]  
M. MinakshiJyoti, Advocate  
[In A.A Nos. 13 to 19 of 2020]  
For the Respondents : Mr.Krishna Murari, Advocate  
-----

**8/Dated17<sup>th</sup> February, 2022**

These matters have been taken upthrough video conferencing.

**2.** With consent of learned counsel for the parties, all the Arbitration Applications have been heard together and are being disposed of by this common order.

**3.** All these applications have been filed under Section 11 (6) (C) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act, 1996") whereby and whereunder the prayer for appointment of arbitrator has been made in view of condition stipulated under Clause 21.3 of the Agreement in question.

**4.** The brief facts of the case, as per the pleadings made in the applications, which are required to be enumerated for proper adjudication of *lis*, read as under:

The applicant -Delhi Integrated Multi Modal Transit System Limited (DIMTS) is an expert body providing concepts, planning, designs, modules, architecture and other solutions for transit systems and infrastructure facilities and its implementation across the country. Pursuant to the Notice Inviting Tender, it participated in the tender process and was declared successful.

In Arbitration Application No.12 of 2020, the applicant-consultant company was selected technically and financially on Quality-cum-Cost Based Selection Method for the project "Selection of Consultant for Preparation of Detail Project Report (DPR) for construction of Theme Park at Chiraundi under Ranchi Nagar Nigam.

In Arbitration Application No.14 of 2020, the applicant was selected for preparation of DPR and PMC service for Re-development/Renovation of Bus Stand at Mango (Jamshedpur) in Jharkhand.

In Arbitration Application No.15 of 2020, the applicant was selected for preparation of DPR and PMC service for Re-development/Renovation of Bus Stand at Dumka in Jharkhand.

In Arbitration Application No.16 of 2020, the applicant was selected as consultant for preparation of DPR and PMC service for Strengthening, Development and Beautification of Arterial Sub-Arterial and Collector streets in Dumka, Jharkhand.

In Arbitration Application No.17 of 2020, the applicant was selected for preparation of DPR and PMC service for Re-development/Renovation of Bus Stand under Gumla Nagar Panchayat in Jharkhand.

In Arbitration Application No.18 of 2020, the applicant was selected for preparation of DPR and PMC service for Re-development/Renovation of Bus Stand at Phusro Nagar Parishad in Jharkhand.

In Arbitration Application No.19 of 2020, the applicant was selected for preparation of DPR and PMC service for Re-development/Renovation of Bus Stand at Godda Nagar Panchayat in Jharkhand.

In Arbitration Application No. 20 of 2020, the applicant was selected for preparation of DPR and PMC service to execute Integrated Sewerage and Storm Water Drainage project at Madhuban (Parasnath) under Giridih district.

After being declared successful in tender process, the parties entered into agreement and work order was

issued. Thereafter, the applicant-petitioner started to work as per agreement.

It is the case of the applicant-petitioner that as per terms of agreement and as also demand of respondent some additional work was also done and submitted detailed DPR and raised invoices against it, but neither the detailed DPR was approved nor payment was released. It is further case of the applicant-petitioner that in the meanwhile the project cost was also enhanced.

Applicant-petitioner in Arbitration Application Nos. 14 to 19 has submitted that to the utter surprise, contrarily the respondent imposed liquidated damages on approved consultancy fee on applicant-petitioner. Though clarification to that letter was sent to respondent stating that penalty imposed upon the applicant-petitioner is inappropriate, as such the same be withdrawn but it was replied that the liquidated damages is not arbitrary and is as per terms of agreement.

It is further case of the applicant-petitioner that repeatedly applicant made requests for payment but it did not evoke any response, therefore, a dispute arose.

It has further been averred that respondent's failure to honour its commitment forced petitioner to invoke Clause 21.1 and 21.2 of the contract/agreement for



amicable settlement or settlement through conciliation/mediation but it did not work.

In view thereof, since the claim of the applicant has not been decided by the respondents-authorities, the applicant invoked the arbitration clause, being clause no. 21.3, as provided in the agreement, by filing present arbitration application under Section 11 (6) (c) of the Act, 2006 for appointment of sole arbitrator.

**5.** The respondent-Jharkhand Urban Infrastructure Development Company Limited have appeared and filed counter affidavit disputing the claim of the applicant for appointment of arbitrator.

**6.** Heard learned counsel for the parties and perused the materials available on record.

**7.** Learned counsel for the applicants has submitted that they have started work as per agreement and accordingly proceeded towards its completion but for one reason or the other the respondent did not co-operate and as such the work could not be completed within the time-frame. It has further been submitted that though they made several requests for payment of the amount for the work executed by them but not paid. Thereafter, several correspondences were made for settlement of dispute amicably and through mediation, as would appear from several letters issued in this regard appended

with the instant applications. But, it did not fetch any result.

According to applicant, when the dispute has not been resolved either through amicable settlement or negotiation and/or mediation, as provided under Clause 21.1 and 21.2, the applicant has resorted to Clause 21.3 for appointment of arbitrator by filing the instant arbitration application, which provides that in case the dispute is not resolved by either amicable settlement and negotiation and/or mediation, the dispute shall be settled by the arbitrator under the Act, 1996.

**8.** Mr. Krishna Murari, learned counsel for the respondent has mainly raised two objections.

First is with respect to stamp duty. According to him, the agreement is not accompanied with stamp duty, therefore, the instant arbitration applications is not maintainable. The respondent has taken aid of the judgment rendered in ***Garware Wall Ropes Ltd. Versus Coastal Marine Construction [(2019) 9 SCC 209]***, as appended to Annexure A-1 to the counter affidavit, wherein the Hon'ble Apex Court has laid down the proposition that in absence of stamp duty in the agreement the application filed for appointment of arbitrator will be treated to be not maintainable.

Second ground has been taken to the effect that before appointment of arbitrator, as provided under Clause 21.3 of the agreement, the other modes of settlement of dispute as provided in the agreement ought to have been resorted to by the applicant. Since in the agreement/contract in question there is specific provision as under Clause 21.1 and 21.2 for 'amicable settlement' and 'negotiation and/or mediation' and in case the dispute is not resolved either by these modes, the recourse of appointment of arbitrator is to be taken.

According to learned counsel for the respondent the applicant-petitioner without resorting to the recourse as provided under Clause 21.1-Amicable Settlement and 21.2-Negotiation and/or Mediation for dispute resolution has straightway approached to this Court for appointment of arbitrator, therefore, the instant applications are not maintainable.

9. In response to such submission, learned counsel for the applicants has submitted that so far as reliance placed by learned counsel for the respondent upon the judgment rendered in **Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)** wherein proposition has been laid down that in absence of stamp duty in the agreement the application filed for appointment of arbitrator will be treated to be not

maintainable, has been dealt with by Hon'ble Apex Court in the case of **M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors. [(2021) 4 SCC 379]** wherein Hon'ble Apex Court has been pleased to hold that Garware judgment does not lay down correct proposition of law so far finding with respect to unstamped commercial contract is concerned. For ready reference, the relevant paragraphs of the judgment are quoted as under:

**“28.** *In our view, the decision in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] does not lay down the correct position in law on two issues i.e. : (i) that an arbitration agreement in an unstamped commercial contract cannot be acted upon, or is rendered unenforceable in law; and (ii) that an arbitration agreement would be invalid where the contract or instrument is voidable at the option of a party, such as under Section 19 of the Contract Act, 1872.*

**29.** *We hold that since the arbitration agreement is an independent agreement between the parties, and is not chargeable to payment of stamp duty, the non-payment of stamp duty on the commercial contract, would not invalidate the arbitration clause, or render it unenforceable, since it has an independent existence of its own. The view taken by the Court on the issue of separability of the arbitration clause on the registration of the substantive contract, ought to have been followed even with respect to the Stamp Act. The non-payment of stamp duty on the substantive contract would not invalidate even the main contract. It is a deficiency which is curable on the payment of the requisite stamp duty.*

**30.** *The second issue in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] that a voidable contract would not be arbitrable as it affects the validity of the arbitration agreement,*

*is in our view not the correct position in law. The allegations made by a party that the substantive contract has been obtained by coercion, fraud, or misrepresentation has to be proved by leading evidence on the issue. These issues can certainly be adjudicated through arbitration.*

**31.** *We overrule the judgment in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] with respect to the aforesaid two issues as not laying down the correct position in law.*

**32.** *Garware [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] judgment has followed the judgment in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777]. The counsel for the appellant has placed reliance on para 22 of the judgment to contend that the arbitration clause would be non-existent in law, and unenforceable, till stamp duty is adjudicated and paid on the substantive contract. We hold that this finding is erroneous, and does not lay down the correct position in law. We have already held that an arbitration agreement is distinct and independent from the underlying substantive commercial contract. Once the arbitration agreement is held to have an independent existence, it can be acted upon, irrespective of the alleged invalidity of the commercial contract.”*

Learned counsel for the applicant has submitted that in view of law laid down by Hon’ble Apex Court in the aforesaid case, submission of learned counsel for the respondent to the effect that for want of stamp duty the instant applications are not maintainable, is not worth to be considered. It has further been submitted that so far as other submission i.e. straightway approaching this Court by making request for appointment of arbitrator as per terms of agreement as under clause 21.3 is concerned, the

same is not correct in view of the fact that before resorting to the aforesaid condition of agreement several requests have been made for amicable settlement of the dispute as also for settlement of dispute through conciliation or mediation as would appear from letters appended to the arbitration application. In furtherance to such submission it has been submitted that even accepting the submission advanced by learned counsel for the respondent regarding the issue of stamp duty, the agreement/contract, which is subject matter of claim herein is having sufficient stamp duty.

**10.** This Court, before appreciating the arguments advanced by learned counsel for the parties and averments made in the affidavits filed by the parties and annexures appended thereto, deems it fit and proper to first refer to the relevant dispute resolution clause, as mentioned in the agreement, i.e., Clause 21.1, 21.2 and 21.3, which read as under:

**21.DISPUTE RESOLUTION**

**21.1.Amicable Settlement**

*The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.*

**21.2.Negotiation and/or Mediation**

*In case the dispute is not resolved amicably, the matter shall be resolved through negotiation and/or mediation by the Principal Secretary/ Secretary, Urban Development Department.*

**21.3.Arbitration**

*In case the dispute is not resolved by either of the above stated modes, it shall be settled by arbitrator under the Arbitration and Conciliation Act, 1996 and its decision would be final and binding on both the parties. The Arbitration and Conciliation Act, 1996 and the rules made thereunder and any statutory modification or re-enactments thereof, shall apply to the arbitration proceedings. The venue of the arbitration shall be Ranchi, Jharkhand. Retired High Court Judge may be nominated by the Client to act as arbitrator. Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Consultant shall continue to perform all its obligations under Agreement without prejudice of final adjustment in accordance with such award.*

XXX

XXXX

XXXX

It is evident from the statement made under clause 21.1 that if a dispute arose in connection with this Contract or the interpretation thereof the parties shall use their best efforts to settle all disputes amicably. In case, the dispute is not resolved amicably, Clause 21.2 says that the matter shall be resolved through negotiation and/or mediation. Clause 21.3 says that if the dispute is not resolved either by amicable settlement or by negotiation and/or mediation, it shall be settled by arbitrator under the provisions of Act, 1996.

Thus, it is evident that before resorting to the condition stipulated under 21.3 for appointment of arbitrator, it mandates so far condition stipulated in the contract is concerned that in case of any dispute it will be incumbent upon the parties to resort for amicable settlement, as provided under Clause 21.1 and negotiation

and/or mediation, as provided under Clause 21.2 of the agreement and if there is no possibility for amicable settlement the matter shall be resolved through negotiation and/or mediation, as per condition stipulated under Clause 21.2 of the agreement/contract. Thereafter, even if the dispute has not been resolved either by way of mechanism provided under 21.1 and 21.2 it will left open to the party to make request for arbitration by making application under the provisions of Arbitration and Conciliation Act, 1996.

**11.** As such, it is required to first look into as to whether before invoking clause of Arbitration as under Clause 21.3, the applicants have resorted to other modes of dispute resolution as under Clause 21.1 and 21.2 or not?

**12.** This Court has gone across the Arbitration Applications and found therefrom that correspondences have been made to the respondent by the applicant for amicable settlement or settlement through negotiation or by way of mediation.

It further requires to refer herein that the respondents have filed a detailed counter affidavit and although they have taken a plea and stand that the applicants have straightway resorted to the condition stipulated under Clause 21.3 for appointment of arbitrator



by invoking the jurisdiction under Clause 11 (6) (C) of the Act, 1996 but the averments made in the arbitration applications to the effect that the recourse have been taken for appointment settlement of dispute amicably through conciliation or mediation, has not been disputed.

**13.** Further, in course of argument, when this Court has put a question on learned counsel for the respondent that if any application has been filed by the applicant for settlement of dispute whether any response has been made to that even by taking negative response, it has been replied by learned counsel for the respondent that no such decision has been taken.

**14.** The question is that *if applications were filed by one or the other party before the respondent, the second party, is it not incumbent upon the respondent to take decision even by taking adverse decision?*

**15.** The answer of this Court will be that such action cannot be appreciated, reason being that if any application is being filed by the applicant-petitioner for redressal of grievance, particularly, in the given facts of the case, the claim which contains a condition of amicable settlement or settlement through negotiation and/or mediation before resorting to the arbitration clause, but having not responded to such letter the respondent cannot be allowed to take the plea that the petitioner-

applicant has not taken recourse of dispute resolution as provided under Clause 21.1 and 21.2 by way of 'amicable settlement' and 'negotiation and/or mediation'.

**16.** Therefore, this Court is of the view that, plea which has been taken by respondent for taking recourse of the arbitration clause straightway ignoring the stipulation made at clause 21.1 and 21.2, deserves to be rejected. Accordingly, the same is rejected.

**17.** So far as second plea i.e., want of stamp duty is concerned, for which, learned counsel for the respondent has placed reliance upon the judgment rendered in the case of **Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)** is concerned, this Court has perused the aforesaid judgment wherein ratio has been laid down also about necessity of stamp duty in arbitration agreement but in the recent judgment of the Hon'ble Apex Court in **M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors (supra)** proposition has been laid down, the relevant paragraphs of which has been quoted and referred hereinabove, which clarifies the position as of now that on the ground of non-stamping of the agreement stamp duty, the application filed under Section 11 (6) (C) of the Act, 1996 cannot be held to be not maintainable.

However, the judgment rendered in **Garware Wall**

**Ropes Ltd. Versus Coastal Marine Construction (supra)**, has been referred before the Constitution Bench for authoritative settlement of the said issue.

Even considering the aforesaid fact, since the respondent has relied upon the judgment of Hon'ble Apex Court in **Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)** rendered in the year 2019 but thereafter the issue fell for consideration in the case of **M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors (supra)** wherein requirement of stamp duty in commercial contract would invalidate, has been held to be not proper.

**18.** This Court, taking into consideration the fact and settled position of law that there are two conflicting view of Hon'ble Apex Court, the recent judgment is required to be followed and moreover in the present scenario the judgment rendered in the case of **M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors (supra)** has been referred before the Constitution Bench for its authoritative settlement, is of the view that merely because non-payment of stamp duty on the commercial contract, as the case herein, and as per the objection raised by the respondent, arbitration agreement cannot be thrown out.

Moreover, in the facts of the case, as has been submitted by learned counsel for the petitioner- applicant that stamp duty on the arbitration agreement is sufficient as would be evident from perusal of the agreement itself which is in consonance with the rules/regulations framed by Department of Revenue, Registration and Land Reforms, Government of Jharkhand wherein requirement of stamp duty for agreement is Rs. 3.50, which according to applicants is already with the arbitration agreement.

**19.** The judgment rendered by Hon'ble Supreme Court in ***Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)*** case has been passed by Hon'ble Bench comprising two Hon'ble Judges, while judgment passed in ***M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors(supra)*** has been passed by the Bench comprising three Hon'ble Judges of the Hon'ble Supreme Court. It is settled position of law that the judgment which has been passed by Hon'ble Supreme Court having larger Coram is having precedential value over the judgment rendered by the Bench lesser in Coram as settled by Hon'ble Apex Court in the judgment rendered in ***ShankerRaju Vs. Union of India[(2011) 2 SCC 132]***at paragraph 18, which reads hereunder as:

*18. The second observation we wish to make is, the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions. The pronouncement of law*

by a larger Bench of this Court is binding on a Division Bench of this Court, especially where the particular determination by this Court not only disposes of the case, but also decides a principle of law. We further add that it would be inappropriate to reagitate the very issue or a particular provision, which this Court had already considered and upheld.

Therefore, the judgment rendered in ***M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors(supra)*** is having precedential value over the judgment rendered in ***Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)***.

This Court, taking into consideration the finding recorded by Hon'ble Supreme Court in ***Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)***, which has been placed by learned counsel for the respondents, is of the view that reliance which was placed by learned counsel for the respondents upon the judgment rendered in ***Garware Wall Ropes Ltd. Versus Coastal Marine Construction (supra)*** is having no force after judgment rendered in ***M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors(supra)***, which has precedential value.

**20.** This Court, therefore, is of the view by taking into consideration the judgment rendered in ***M/s N.N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd & Ors(supra)*** that the issue of non-payment of stamp duty

on the agreement contract as has been raised on behalf of respondent, is also having no force.

**21.** This Court, after deliberating upon the issue as per the discussions made hereinabove, is of the considered view these applications filed under Section 11(6) (c) of the Act, 1996 are deserve to be allowed for resolution of the dispute through arbitration.

**22.** Learned counsel for the parties in course of argument has submitted that although applications have been filed pertaining to different agreements but instead of appointing individual arbitrator agreement-wise, if a single arbitrator is appointed to deal with all the claims pertaining to different agreement, subject matter of instant arbitration applications, the same will be proper, in order to avoid different findings by the different arbitrators.

**23.** This Court, after considering the aforesaid submission, is in agreement with the view expressed by learned counsel for the parties for appointment of sole arbitrator for all the disputes, considering the reason that if different arbitrators will be appointed there will be possibility of different finding and different awards by the arbitrators. Therefore, in order to avoid conflict in finding by different arbitrator, if appointed agreement-wise, this Court is of the view that appointment of sole arbitrator will be just and proper order for resolution of the dispute.

**24.** This Court, therefore, appoints Hon'ble Mr. Justice D.N. Prasad (Retd.), Former Judge of this Court presently residing at Gauri Shankar Nagar, North Office Para, Doranda, Ranchi as Arbitrator to adjudicate the dispute between the parties.

**25.** The proposed Arbitrator is required to submit a declaration in terms of Section 12 of Arbitration and Conciliation Act, 1996.

**26.** Learned Arbitrator would be free to lay down fees and other expenses towards conduct of the arbitration proceedings, however, keeping into account the ceiling prescribed under Schedule IV of the Act of 1996 as amended. Learned Arbitrator would endeavour to conclude the proceedings expeditiously, also taking into regard the mandate of the Legislature under Section 29-A of the Act of 1996.

**27.** Let photocopy of the entire pleadings along with copy of the entire order sheet be sent to the learned Arbitrator by the Registry.

**28.** The present Arbitration Applications are disposed of accordingly.

**(Sujit Narayan Prasad, J.)**

Alankar/-