

(2012) 02 JH CK 0045**Jharkhand High Court****Case No:** Arbitration Application No. 2 of 2011

M/s Venu Engineers

APPELLANT

Vs

Dy. General Manager, I/c
(Contracts) MECO Ltd.

RESPONDENT

Date of Decision: Feb. 3, 2012**Citation:** (2012) 2 JCR 81**Hon'ble Judges:** Prakash Tatia, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Prakash Tatia, C.J.

Heard learned counsel for the parties.

2. An agreement between the parties was executed on 23rd March, 2009, wherein it has been provided that entire scope of civil engineering work required for construction of COB 6, RSP, Rourkela shall be carried out by M/s Otto Projects alongwith their consortium partner M/s Venu Engineers as per responsibility matrix given in MOU dated 17th November, 2008. Both M/s Otto Projects and M/s Venu Engineer shall be jointly and severally responsible for completion of the work. In case, any one partner fails, the other party shall be responsible to complete the work of defaulting partner.

3. A dispute arose between the parties and in view of the Arbitration Clause, which is Clause no. 36.0, the petitioner served a notice upon the respondent, copy of which has been placed on record as Annexure-2. Inspite of the notice, Arbitrator having not been appointed, this application has been submitted.

4. Learned counsel for the respondent submitted that in the Arbitration application, the Deputy General Manager of the MECON Ltd. has been impleaded as party; whereas MECON is a legal entity and the arbitration application is not maintainable against the Deputy General Manager. Learned counsel for the petitioner submitted

a supplementary affidavit praying that MECON Ltd. may be impleaded as party-respondent and it is only a technical error and cannot be fatal.

5. In view of the above, the MECON Ltd. is impleaded as party- respondent through Deputy General Manager in this petition. Since, there is no dispute regarding the contract between the parties, which contains Arbitration clause, and dispute is there, for which a notice has been served by the petitioner and inspite of notice, no Arbitrator has been appointed, therefore, with consent of the parties, Justice D.N. Prasad, a retired Judge of Jharkhand High Court, is, hereby, appointed as an Arbitrator to adjudicate the dispute between the parties, who may fix the remuneration and the expenses, which will be borne by both the parties equally.

6. This application is, thus, allowed.