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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Arbitration Application No.1/2014

Brijballabh Sharma, Proprietor, Shree Ram Traders, Ganesh Nagar Colony, Behind Hero Honda Workshop, Kota Road, Baran Vs. State of Rajasthan and Others

Date of Order :::: 29.04.2016

Present
Hon'ble Mr. Justice Mohammad Rafiq

Ms. Rekha Jain for
Mr. Satish Chandra Mittal, counsel for applicant
Mr. Rohitashwa Mishra for
Mr. Sanjeev Singhal, Deputy Government Counsel, for
respondents

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By the Court:-

Present application has been filed by applicant seeking appointment of Arbitrator relying upon Clause 23 of the agreement in question.

The said clause has not been considered as the arbitration clause in recent decision of a coordinate bench of this court dated 08.04.2015 in M/s. Mohammed Arif Construction vs. State of Rajasthan and Another – S.B. Arbitration Application No.90/2012, wherein it was held that in order to construe a clause to be an arbitration clause, it should have the attributes of an arbitration agreement, i.e. the parties should agree to refer the disputes, present or future, to the private tribunal; the private tribunal should be able to adjudicate upon the disputes in an impartial manner giving due and equal opportunity to the parties to put forth their case before it and the parties should have agreed that the decision of the private tribunal in

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respect of the disputes will be binding on them. It was further held that clause 23 read with clause 51 of the agreement in question, being not an arbitration clause or an arbitration agreement, as contemplated in Section 7 of the Arbitration and Conciliation Act, 1996, the provisions of the Act of 1996 could not be made applicable to the facts of that case.

In view of above, the present application does not survive and, therefore, is dismissed. It is needless to say that the applicant shall be at liberty to file appropriate proceedings before the appropriate Court as may be permissible under the law.

(Mohammad Rafiq) J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Giriraj Prasad Jaiman
DR

सत्यमेव जयते