

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2015

C O R A MThe Hon'ble Mr. **SANJAY KISHAN KAUL**, Chief JusticeOriginal Petition No.204 of 2014

M/s.SNC Power Corporation (P) Ltd,
(formerly known as Sri Shankaranarayana Construction Co.,)
represented by its General Manager M.Sureshkumar,
'SNC House', Fourth Floor,
7, Residency Road, (9, Raja Ram Mohan Roy Road)
Bangalore 560 025. ... Petitioner

versus

1.M/s.Bharat Heavy Electricals Ltd.,
Power Sector - Southern Region
represented by its General Manager
474, Anna Salai, Nandanam,
Chennai 600035. ... Respondents

Prayer : *Petition filed under Section 11(5) of
the Arbitration and Conciliation Act, 1996,
for appointment of an Arbitrator from the panel
of Arbitrators of this Court to arbitrate and*

adjudicate the disputes between the parties arising out of Clause 44.0 General Conditions of Contract of Agreement dated 12.10.2005.

For Petitioner : Mr.S.Alagiri

Senior Counsel

for M/s.Ram Associates

For Respondent : Mr.Krishna Srinivasan

for M/s.S.Ramasubramaniam Associates

ORDER

The petitioner has filed the present petition under Section 11(6-A) of the Arbitration and Conciliation Act, 1996, seeking reference of the disputes inter se the parties to Arbitration.

2. The respondent is stated to have floated a tender inviting offers for the Contract of Civil, Structural and Architectural works in which the petitioner participated and was successful by issuance of a letter of intent dated 20.07.2005. In terms of this letter of intent, all terms and conditions of the tender specification, general conditions of contract, Special Conditions of Contract, including the Appendix and Rate Schedule, NIT and references cited in the LOI shall govern the contract.

Under Clause 44.0 of General Conditions of Contract filed herein as Annexure No.1, all disputes relating to the meaning of Specifications, Design, Drawings, Instructions as to the quality of Workmanship or materials used in the Works and any other Question, Claim, Right, Matter or Thing whatsoever arising out of or relating to the Contract, Design, Drawings, Specifications, Estimates, Instructions, Orders or those Conditions or otherwise concerning the Work or the Execution or Failure to Execute the same, whether arising during the progress of the Work or after the completion or Abandonment, could be referred to Arbitration.

3.The aforesaid letter of intent was followed by execution of an agreement dated 12.10.2005.

4. The case of the petitioner as alleged is that there was enormous delay in release of drawings as and when required. This is stated to have resulted in delay. The petitioner sought increase of rates on account of the delay as the rates of the items increased manifold times globally due to escalation clause which is stated to have provided for it, but that is alleged not to contain situations relating to abnormal increase. There are various other claims also made by the petitioner, including for extension of time.

5. The petitioner claims that the works were completed by 31.03.2011 and final bill was submitted. There is a dispute by the respondent even qua the date of completion, and the communication *inter se* the parties show that undisputedly disputes have arisen *inter se* the parties.

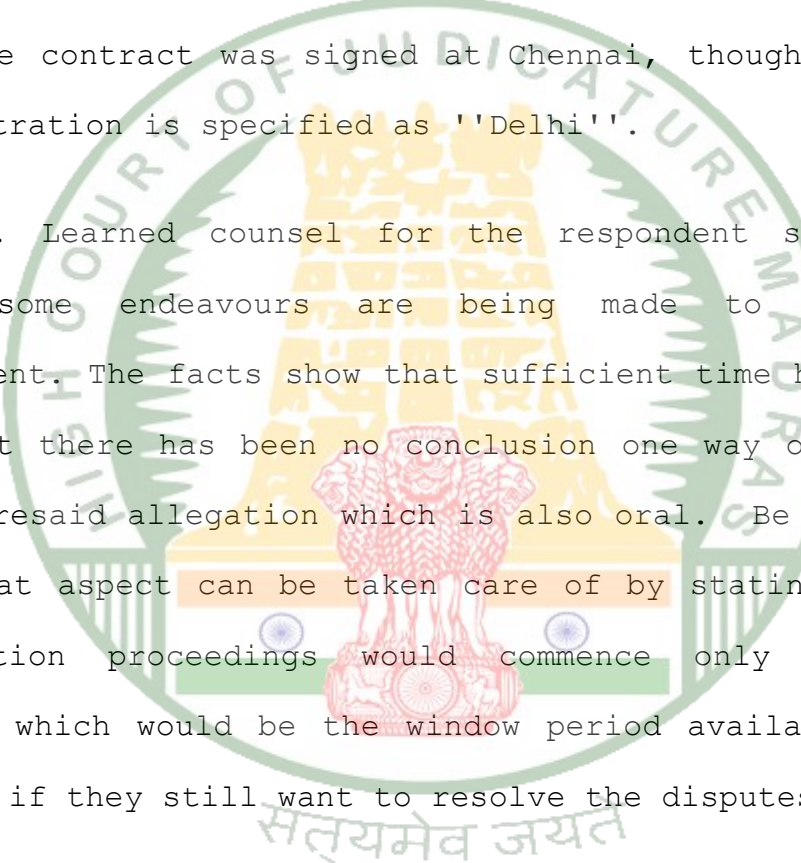
6. In terms of Clause 44.0 being the settlement of disputes and Arbitration Clause, an endeavour has to be made first for settlement, but in case of failure to settle, the General Manager of the respondent was required to appoint an Arbitrator.

7. The petitioner has invoked the Arbitration Clause seeking appointment of an Arbitrator vide letter dated 06.06.2013, the same is said to have met with no response and thereafter, the present petition was filed.

8. The respondents were served, but no reply has been filed, though more than a year had elapsed. It is thus a case of no return.

9. The averments made in the petition and the documents relating to the petition leaves no manner of doubt that the agreement *inter se* the parties contains the Arbitration Clause and that disputes have arisen which has

to be referred to arbitration and no settlement endeavour was successful.

10. On the court query as to how the jurisdiction of this Court is claimed, learned Senior Counsel for the petitioner has drawn the attention of the Court to the signatories of the respondent who are at Chennai and claims that the contract was signed at Chennai, though the place of arbitration is specified as ''Delhi''.

11. Learned counsel for the respondent states that still some endeavours are being made to mediate a settlement. The facts show that sufficient time had elapsed and that there has been no conclusion one way or other to the aforesaid allegation which is also oral. Be that as it may, that aspect can be taken care of by stating that the arbitration proceedings would commence only after two months, which would be the window period available to the parties if they still want to resolve the disputes.

12. The cause of filing the present petition has clearly arisen on account of the failure of the designated authority to appoint an Arbitrator, despite the notice for the same. In fact, no Arbitrator has been appointed right till the filing of the petition and even thereafter till date.

13. In view of the aforesaid, I appoint Mr. Justice Manmohan Sarin, Former Chief Justice of Jammu and Kashmir High Court, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. The arbitration proceedings as proposed by learned counsel for the parties will be conducted under the aegis of the Delhi High Court Arbitration Centre and the parties will be governed by the Rules of the Delhi High Court Arbitration Centre.

14. Copy of the order be sent to a) The Arbitrator, and b) The Arbitration Centre, Delhi.

The original petition is accordingly allowed, leaving the parties to bear their own costs.

Sd/ (S.K.K., CJ.)

11.09.2015

//Certified to be a true copy//
सत्यमेव जयते

Dated this the day of 2015.

R.s/18.11.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.