

In the High Court of Judicature at Madras

Dated : 18.09.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.280 of 2014

M/s.G.G.Hospital
rep. by its Associate Director,
Dr.Kamala Selvaraj.

.. Petitioner

-VS-

Larsen and Toubro Limited,
Rep. by its General Manager,
Head-EDRC (B & F Sector),
Engineering Design Research Centre,
ECC Division, Mount Poonamallee Road,
Porur, Manapakkam, Chennai.

.. Respondents

Petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, to appoint Mr.Justice Doraiswamy Raju (Retd) as the sole arbitrator to adjudicate the disputes between the petitioner and the respondent under Clause 24 of the Consultancy Service Agreement dated 23.04.2008 entered between the petitioner and the respondent.

For Petitioner : Mrs.Nalini Chidambaram, S.C.
For M/s.C.Uma

For Respondent : Mr.R.Murari, S.C.
For M/s.Preetimohan

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ORDER

The present dispute inter se the parties, which has given rise to the petition under Section 11(5) of the Arbitration and Conciliation Act, 1996, arises from the Consultancy Services Agreement executed inter se the parties dated 23.04.2008, which contains the following arbitration clause:

"24.ARBITRATION

All claims, dispute, differences and other matters in question between the parties hereto arising out of or relating to this agreement or the breach thereof shall be settled as far as possibly amicably, failing which such claims, disputes, differences or matters shall be referred to the arbitration and final decision in accordance with the Arbitration and Conciliation Act, 1996, and/or any statutory modifications thereof. The arbitration shall be conducted by a Sole Arbitrator to be mutually agreed and appointed by the parties hereto. The venue of arbitration proceedings shall be Chennai and the language used shall be English."

2.It may be noticed that there is also a Tripartite agreement dated 21.10.2009 to which both the present parties are also parties, in respect of which arbitration is pending before Mr.Justice Doraisamy

Raju, a retired Judge of the Hon'ble Supreme Court. The arbitration clause in that agreement is different, but by consent, two of the parties agreed to an arbitration by Mr. Justice Doraisamy Raju (Retd.), as the Sole Arbitrator and since no claims were laid in that arbitration proceedings by the petitioner and the third party against the respondent, the respondent also did not have any objection to the process of arbitration followed in those proceedings.

3. The petitioner, however, issued subsequently a composite notice under both the agreements, which resulted in an order passed by the then Hon'ble Chief Justice dated 04.02.2014 rejecting the petition filed post the notice having been issued. It was held that there cannot be a composite notice and the procedures of arbitration are different in the two cases.

4. The petitioner appears to have had a second thought after that judgment and decided to pursue the claim only against the respondent out of the agreement inter se the parties dated 23.04.2008. The petitioner seeks a reference to the same arbitrator.

5.Learned senior counsel for the respondent, on instructions, states that the concern of the respondent is that the two proceedings should not get mixed up, though they have no objection to the same arbitrator adjudicating the disputes. It is their say that the present reference would be a separate reference to arbitration and naturally, only the claims arising out of the agreement dated 23.04.2008 would be adjudicated upon, the petitioner having given up the claims arising from the Tripartite agreement.

6.There is really no serious objection to the same by the learned senior counsel for the petitioner.

7.In view of the aforesaid, the present dispute inter se the parties arising from the agreement dated 23.04.2008 is referred to the sole arbitration of **Mr.Justice Doraisamy Raju**, a retired Judge of the Hon'ble Supreme Court, as a separate reference for deciding the claims inter se the parties after entering upon reference. As an abundant caution, it is made clear that what may have transpired in the other arbitration proceedings can naturally not be read against the respondent. The parties jointly state that the said arbitration be held

under the aegis of the Madras High Court Arbitration Centre and would, thus, be governed by the Rules of the Centre.

8. Original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
18.09.2015

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Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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