

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.375 of 2014

M/s.Mentor Printing and Logistics
Pvt. Ltd., Sriperumbhadur Taluk.

.. Petitioner

-VS-

S2S Consultants,
Rep. by its Managing Director.

.. Respondent

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint a panel of three Arbitrators to resolve the disputes between the parties as per the Agreement between the Petitioner and the respondent dated 16.09.2010.

For Petitioner : Mr.R.Suresh Kumar
for M/s.K.M.Vijayan Associates

For Respondent : No appearance

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O R D E R

The petitioner claims to be the owner of the building in the property situated at SIPCOT, Sunkuvarchatram, Sriperumbudur Taluk, Kancheepuram District. The respondent is stated to have approached the petitioner for a contract for turnkey construction of factory, warehouse and office building, which resulted in an agreement dated 16.09.2010.

2.It is in the execution of this contract that disputes have arisen inter se the parties especially on account of delays, which even resulted in two supplemental agreements dated 01.06.2011 and 20.04.2012. Ultimately, the contract was terminated on 21.12.2012.

3.The petitioner filed O.A.No.816 of 2012 seeking relief under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') and obtained a restraint against the respondent from in any manner interfering with the right of the petitioner to carry on construction activities. In those proceedings, none appeared for the respondent.

4.The petitioner also claims that the legal notice dated 10.12.2013 seeking for reference of disputes to arbitration also did not result in anything fruitful. In fact, the perusal of the typed set suggests that the notice was not served, as the respondent was not found at the given address. The aforesaid has given rise to the present petition under the said Act.

5.In the present petition also, the respondent could not be served by ordinary means and was ultimately served by publication.

6.Heard the learned counsel for the petitioner and perused the pleadings and documents.

7.The arbitration clause governing the obligation inter se the parties reads as under:

24.2.Arbitration

Any dispute or different whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this Contract or the breach thereof shall be settled by the arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and govern under then Indian Arbitration Act, 1940 with any modification

thereof and the Award made in the pursuance thereof shall be final and binding on the parties.

In the case of contracts whose Contract Prices does not exceed Rs.500 (Five hundred) Lakhs, reference shall be to sole arbitrator nominated by the "Board of Directors of the Employer". The party seeking arbitration at the time of requesting the aforesaid "Board of Directors" shall specify the dispute or disputes to be referred to arbitration together with the amount or amounts claimed in respect of each dispute, with intimation to the other party both parties may send panels of names to facilitate the task of the "Board of Directors" in the selection of the Sole Arbitrator, though it shall not be bound to select from either of the panels.

In case the contracts whose Contract Price exceeds Rs.500 (Five Hundred) Lakhs, unless both the parties concur in the appointment of a sole Arbitrator, reference shall be made to three arbitrators, one to be appointed by each party within 30 (thirty) days after receipt by the other party of a written notice from the other such other, party having appointed an arbitrator before issue of the notice, and a third arbitrator to be selected within 30 (thirty) days of the date of nomination of the second arbitrator. The venue of arbitration shall be as specified in the Appendix to Tender.

Only persons in the following categories shall be eligible for appointment as arbitrators:-

(a) Past/Present Presidents of the Institutions of Engineers.

(b) Past/Present Presidents of the Institution of Surveyors.

*(c) Past/Present President (and being a Fellow) of the
Institute of Architects.*

8. There is no dispute about the existence of a valid agreement or the arbitration clause. The allegation of the petitioner stands un rebutted as it is a case of no return. Thus, an Arbitrator has to be appointed as per the arbitration clause.

9. In so far as the jurisdictional aspect is concerned, as per the clause extracted aforesaid, a reference has to be made to the Annexure. Learned counsel for the petitioner points out that this aspect is contained in the supplemental agreement dated 01.06.2011, where Clause 6 reads as under:

6. Governing Law and Dispute Resolution

The arbitration clause provides three sources for appointment of the Arbitrator. Thus, I appoint, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties, subject to the plea of limitation. As requested by the learned counsel for the petitioner, the arbitration proceedings will be conducted under

the ageis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

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

The assistance provided by the learned counsel on behalf of the petitioner is appreciated.

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

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Note: 1) 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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