

In the High Court of Judicature at Madras

Dated : 09.10.2015

Coram :

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

O.P.No.380 of 2014

Cheyyar SEZ Developers Pvt Ltd.,
rep. by S.Arul
General Manager -Operations,
Plot No.3, SIPCOT Industrial Park,
Mangal Village, Akkur Via (KCM),
Cheyyar Taluk,
Tiruvannamalai District-631 701. .. Petitioner

-vs-

The Government of Tamil Nadu,
Secretary to Government,
Industries Department,
Secretariat, Fort St. George,
Chennai-600 009. .. Respondent

Petition filed under Section 11 (6) of the
Arbitration and Conciliation Act, 1996, to appoint a sole
Arbitrator mutually acceptable to the petitioner and the
respondent to resolve the disputes which have arisen
between the petitioner and the respondent or any other
person.

For Petitioner : Mr.Sankarvaradharajan
for
Mr.A.K.Mylsamy & Associates
For Respondent : Mr.P.H.Arvinth Pandian
Addl. Advocate General
assisted by
Mr.M.Venugopal, Spl. G.P.
* * * * *

ORDER

The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "*the said Act*") arise from the allegation of the disputes in respect of the Memorandum of Understanding (MoU) dated 19.09.2006.

2. It is the case of the petitioner that G.O.Ms. No.191 Housing and Urban Development (OPI) Department, dated 01.06.2007 sought to levy the infrastructure and amenity charges, which is a post MoU event. It is the case of the petitioner that as per the MoU terms, the respondent had to make arrangement for infrastructure free of charge and thus, the consequences of G.O. have to be borne by the respondent, albeit a different department of the same State Government.

3. No reply has been filed despite opportunities. But the learned Additional Advocate General seeks to raise the defence based on the fact that challenge to the said G.O. stood repelled in the writ petition, including by the petitioner and that no clause of MoU provides for exemption from any such future levy.

4. On hearing the learned counsel for parties, I am of the view that this is not a forum to decide the merits of

the controversy. The validity of the G.O. is not in question. The question raised by the petitioner is whether the terms and conditions of the MoU have to be read in a manner to provide for the levy to be absorbed by the respondent. This dispute has to be determined on merits as to whether the stand of the petitioner or the respondent is correct based on the wordings of the MoU.

5. The existence of the agreement, its validity, arbitration clause being there and thus, the disputes having arisen are not in doubt. The arbitration Clause 3(e) reads as under:-

"(e) The Parties shall endeavour to resolve amicably disputes or differences, if any, arising out of this MoU through mutual discussions. If the dispute is not resolved within ninety (90) days of commencing such negotiations, either party shall refer the dispute to Arbitration, which shall be conducted by an arbitrator appointed by mutual agreement, as per the procedure provided under the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Chennai."

6. It is thus quite apparent that in the absence of any agreement, this Court will have to appoint an Arbitrator to enter upon the reference and adjudicate the disputes as the place of arbitration is also at Chennai.

7. I, thus, appoint **Mr. Justice R.S.Ramanathan**, a retired Judge of this Court as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

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

सत्यमेव जयते

Sd/ (S.K.K., CJ.)
09.10.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/17.12.2015

COURT OFFICER

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