

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.414 of 2014

M/s.Capital Control (India) Pvt. Ltd.,
having its office at 15 AJ, Laxmi Estate,
Link Road, Andheri West,
Mumbai-400 053
rep. by its Director &
Authorised Signatory .. Petitioner

-vs-

M/s.Bharat Heavy Electricals Limited,
having its Regional Office at 690, Anna Salai,
EVR Periyar Building,
Nandanam,
Chennai-600 035. .. Respondent

Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996, to appoint an
independent and impartial Sole Arbitrator of his choice to
adjudicate upon the claims of the petitioner and the
disputes between the parties.

For Petitioner : Mr.R.Murari
Senior Counsel
for
M/s.Preeti Mohan

For Respondent : Mr.Sanjay Mohan
for
M/s.S.Ramasubramanian
Associates

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O R D E R

The disputes inter se the parties emanate from the
Letter of Intent dated 26.11.2012, which contains general
and special conditions of contract applicable to Bharat
Heavy Electricals Limited/respondent.The arbitration Clause

inter se the parties provides for settlement of disputes as under:-

"30.1 In the event of any disputes or difference arising out of the execution of the order/contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Settler/contractor in any manner touching upon the order/contract, such dispute or difference shall (except as to any matters the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of the purchaser.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) or statutory modifications or reenactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be at New Delhi.

30.3 The cost of arbitration shall be borne equally by the parties."

2. It is not in issue that the disputes have arisen inter se the parties. The question, which arise for consideration is as to whether the competent authority of the respondent has lost his right to appoint the Arbitrator in terms of the arbitration clause. On this issue alone, the learned counsel for parties have addressed their submissions.

3. In the aforesaid context, the notice invoking arbitration is dated 17.4.2014, which was replied to by the respondent on 03.05.2014 proposing that the place of arbitration be at Chennai instead of New Delhi (as contained in the arbitration clause). This request was rejected by the petitioner on 05.05.2014. The respondent raised its counter-claim on 16.05.2014. On 17.6.2014, the respondent proposed that the venue for hearing may be left to the Arbitrator. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 has been filed on 17.07.2014.

4. The submission of the learned counsel for the respondent is that soon after invocation of the arbitration clause and within the window of 30 days, the respondent sent reply proposing shifting of place of arbitration and thus, discussion over that aspect should be excluded for the purposes of computing the window of 30 days.

5. The said plea has no force as even if it is

assumed so, the petitioner had sent its response of rejection on 05.05.2014. Thus, the respondent knew on that date that the Arbitrator had to be appointed atleast within 30 days of that date, the nomination ought to have been made. Instead, the respondent kept on saying it was appointing the Arbitrator but even till the filing of the petition on 17.07.2014, no Arbitrator had been appointed.

6. In the given situation, the respondent has lost their right to appoint an Arbitrator.

7. The learned counsel for the petitioner states that he has obtained fresh instructions and to give a quietus to the matter, he is willing for arbitration at Chennai.

8. The learned counsel for parties jointly propose the name of Justice K.Govindarajan, a retired Judge of this Court as the Sole Arbitrator.

9. I, thus, appoint **Mr.Justice K.Govindarajan**, 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 ageis 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.

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

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

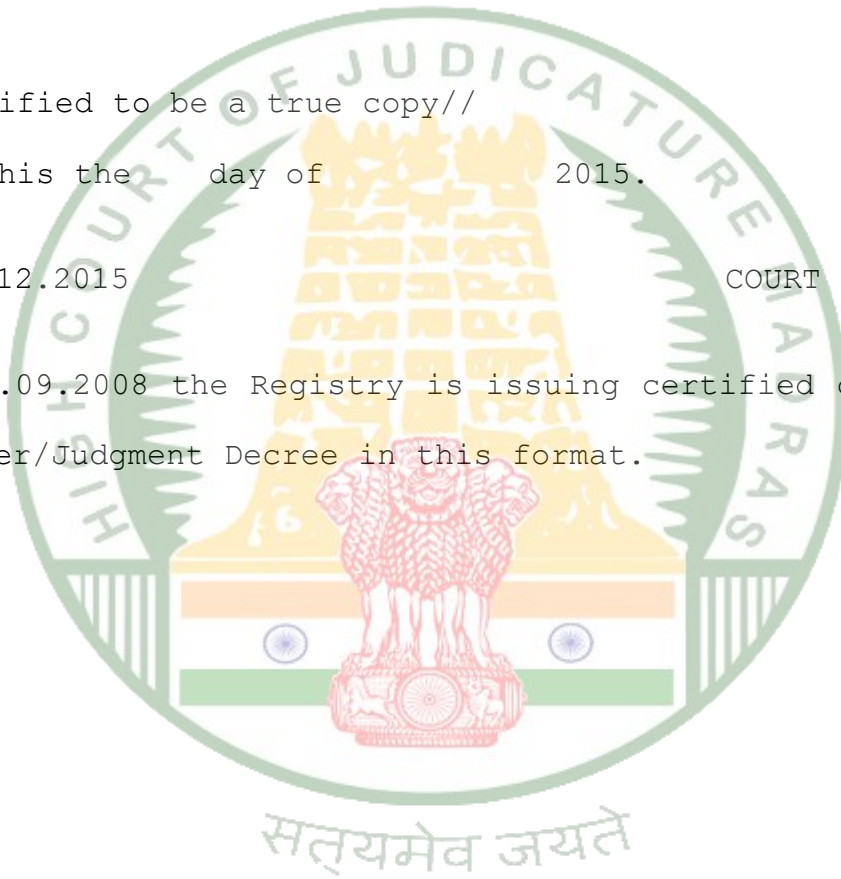
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Dated this the day of 2015.

R.s/29.12.2015

COURT OFFICER

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



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