

In the High Court of Judicature at Madras

Dated: 30.01.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice

Original Petition No. 616 of 2014

Global Health City
(previously known as Global Hospitals
and Health City)
No.439, Cheran Nagar, Perumbakkam
Chennai 600 100.

.. Petitioner

vs.

M/s. Ahal Associates
rep. by its Proprietor, G. Suresh
No.25, K.S. Ramasamy Street
K.K. Pudur, Coimbatore 641038.

.. Respondent

PRAYER : *Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve the dispute between the parties arising out of the Agreement dated 02.02.2010.*

For Petitioner	:	Mr. N.L. Rajah
For Respondent	:	Mr. K.S. Natarajan

ORDER

An Articles of Agreement dated 02.02.2010 was signed between the petitioner and the respondent/Contractor for construction of LINAC Bunkers, for which a letter of Award had been issued to the respondent dated 29.12.2009. The mode of resolution of disputes arising from the said agreement is contained in Clauses 05 and 06, as under:

“05. The decision of the Architect shall be final, conclusive and binding on question relating to specifications, designs and drawings, instruction, quality of workmanship and materials used on the work during the execution and shall not be subject to arbitration.

06. Disputes between the parties other than those referred in para (5) shall be referred to the award of the architect. In case of unsolved disputes between the parties, the same shall be referred to a third party who shall be a competent person and who shall decide the matter and award the same in accordance with the Arbitration Act.”

2. It is the interpretation of the above said Clauses which is

required in the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act').

3. It is the common case of the parties that the claims of the respondent have not been made under Clause 05 and it has no application to the present case. It is Clause 06 which comes into operation on account of the respondent claiming certain amounts and being disputed by the petitioner, the parties approached the Architect, who, in terms of the letter dated 01.04.2013, observed that he verified the work done by the respondent/Contractor in the presence of both the parties earlier, and would make a final inspection before passing an "Award" as agreed to by the parties involved. This was in the context of the objection raised by the petitioner vide letter dated 05.02.2013 to the effect that the Architect had to decide the dispute, but there was no question of reference of disputes to him, as an "Arbitrator". The Architect then proceeded to inspect the site and post inspection, minutes were drawn and a document called "Award" has been made, whereby a sum of Rs.170,06,120/- has been held payable to the respondent and after taking into consideration the amount already paid and TDS

Certificates, the balance amount has been quantified at Rs.19,74,698/-.

4. The plea of the petitioner is that what Clause 06 envisages is a decision by the Architect which has been colloquially referred to as the “Award of the Architect”. This pleading is supported by the latter part of Clause 06, which refers to the fact that the unsolved disputes between the parties were to be referred to a third party, who would be competent and shall decide the matter and pass an award in accordance with the Arbitration Act. It may be noticed that Clause 05 refers to certain aspects, on which the “decision of the Architect” would be final and binding and would not be subject to arbitration.

5. Learned counsel for the petitioner submits that by no stretch of imagination, can the document prepared by the Architect be called an “Award”, since it does not meet the requirements of Section 23 of the said Act - no statement of claim was ever filed, nor were other aspects complied with. It has also been stated that there is no reason assigned, which was mandatory as per Section 29 of the said Act, since there is no agreement otherwise recorded between the parties. A copy of the

document sent to the petitioner is also not signed and thus, Section 31 of the said Act, is also not complied with.

6. On the other hand, learned counsel for the respondent submits that the procedures contemplated under the aforesaid sections would not play a vital role and the parties can agree to any procedure. It is open to the parties to even derogate from the provisions of the said Act, in view of Section 4 of the said Act, which provides for waiver of rights. It is his submission that the Award having been made and no objections having been filed by the respondent under Section 34 of the said Act, such an Award cannot be set aside through the present proceedings.

7. I have given a thought to the matter.

8. It is not the requirement or intention of this Court to go into the matter in the form of objections under Section 34 of the said Act. The limited aspect to be considered by this Court is as to what is the purport and meaning of the disputes resolution clause.

9. On consideration of the matter, I find that Clause 05 deals with the matters over which the decision of the Architect is final. These are really in the nature of what are commonly called “excepted matters”. It is in that context it has been observed that there shall be no arbitration in such a case. Insofar as Clause 06 is concerned, the sentence begins with the disputes between the parties being referred to the Architect. No doubt, the words used are “Award of the Architect”. If what the Architect was supposed to deliver was an Award, then there was no need of the second sentence, as there cannot be any appeal against the Award. However, the second part of Clause 06 stipulates that the unresolved disputes inter se the parties would be referred to a third party for arbitration. It is, thus, obvious that what is envisaged by the first part in Clause 06 is something different from Arbitration. The mere use of the words “Award of the Architect” would not, thus, make an Award, as it would be really an endeavour to resolve the disputes inter se the parties. It is trite to say that while interpreting a Clause, meaning should be assigned to different aspects of the Clause and one should not interpret it in a manner so as to make another part of the agreement redundant. If the plea of the respondent was to be accepted, the latter

part in Clause 06 would become redundant. I am, thus, of the view that the Architect was required to resolve the disputes and since that resolution is not acceptable to both the parties, the disputes survive for arbitration by a third party. Thus, the document prepared by the Architect cannot be treated as an Award and a reference has to be made in terms of second part of Clause 06.

10. Learned counsels for the parties at this stage, in view of the suggestion of this Court, are agreeable that an endeavour should be made to resolve the disputes through the process of mediation and accordingly, this matter is referred to the Mediation Centre, High Court, Madras and the parties will appear before the Mediator on 10.02.2015 at 2.15 p.m. The Mediator will endeavour to resolve the disputes, for which 60 days' time from the first date fixed before the Mediator is granted or any extended time period that may be granted by this Court.

11. In case of failure to arrive at a settlement within sixty days as stated aforesaid or any extended period that may be granted by this Court, as proposed by the learned counsel for parties, I appoint **Thiru.**

T.Mohandoss, a retired District Judge, residing at Old No.3, New No.5, Solaiamman Koil Street, Purasawalkam, Chennai 600 007 (Mobile No.94431 93382), as the Sole Arbitrator, to enter upon the reference and, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of reference from the Mediation Centre. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by the parties equally.

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

ATR

(S.K.K., C.J.)
30.01.2015

THE HON'BLE THE CHIEF JUSTICE

ATR

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