

In the High Court of Judicature at Madras

Dated : 28.04.2015

Coram :

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

O.P.No.791 of 2014

GATI Ship Limited
No.27/5, 'Laxmi Towers',
II Floor, Dr.Radhakrishnan Salai,
Mylapore, Chennai.

.. Petitioner

-VS-

L & T Ship Building Limited
TC-1, Building, L & T Campus,
22, Mount Poonamallee Road,
Manapakkam, Chennai.

..Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent and sole Arbitrator to adjudicate upon the disputes and claims that have arisen between the parties hereto under the agreement for dry docking and repairs dated 01.04.2013.

For Petitioner

: Mr.J.Ravikumar

For Respondent

: Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia

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ORDER

The disputes arise out of the agreement for Dry Docking and Repairs dated 01.04.2013, which contains the methodology of resolution of disputes in Clauses 17 and 18 as under:

17. GOVERNING LAW & DISPUTE RESOLUTION

17.1 These conditions and the Contract entered between the Parties shall be interpreted, construed, and governed in accordance with the Laws of India.

17.2 In event of any of dispute arising between the Parties, the dispute/claims shall be referred to sole arbitrator with mutual consent in accordance with Arbitration and Conciliation Act, 1996. The arbitration venue shall be Chennai. The arbitration proceedings shall be conducted in English language. The arbitral award shall be final and binding upon the Parties.

18. REFERENCE TO EXPERT

18.1 In the event of any dispute giving rise to technical issues purely of fact (including, without limitation, any dispute relating to questions as to the existence, degree or extent of any alleged defects relating to any part of the Works), either party may give a notice that a dispute exists (a "Dispute Notice") to the other party and if the parties have not resolved the dispute within seven (7) days of the Dispute Notice, the following provisions of paragraph 18 will apply.

18.2 Either party may refer the dispute to an independent person agreed by the parties or in default of agreement within fourteen (14) days of the Dispute Notice, to an independent person, experienced as a Marine Surveyor, nominated by the Classification Society, (the "Expert") with a request that the Expert make a report on the technical issues of fact in dispute within sixty (60) days of receiving the reference.

18.3 In any reference, the Expert shall act as an expert and not as an arbitrator.

18.4 The costs and expenses of the Expert shall be proposed by the Classification Society and shall be borne equally by the Principal and the Contractor.

18.5 The conclusions of the Expert's report do not constitute a judgment or award on matters of law."

2. In view of the aforesaid provision, before taking recourse to arbitration, a reference to an expert has to be made, who has to opine within sixty days of receiving the reference and in the event of inability to resolve the dispute, the matter has to go to arbitration.

3. The sole defence raised by the learned counsel for the respondent is that such a reference has not been made to the expert.

4. On hearing the learned counsel for parties, it is agreed as under:

- a) The dispute be first referred to an expert, i.e. Mr. Uday Bhogte, M/s. UBA Insurance Surveyors and Loss Assessors LLP (Chartered Engineers, Marine & Offshore Warranty Surveyors), who would proceed in accordance with Clause 18 and thus, sixty days time would be available to him from receiving the reference. The papers of reference will be submitted to him with a copy of this order, within two weeks of receipt of a copy of this order.
- b) The expert would opine within sixty days of the reference being received as per Clause 18.2.
- c) If the dispute is not resolved with the opinion of the expert, the matter be referred to the sole arbitration of Mr. Justice K.P. Sivasubramaniam, a retired Judge of this Court.

5. It is ordered, accordingly, as aforesaid and as proposed and agreed, I appoint, **Mr. Justice K.P. Sivasubramaniam**, a retired Judge of this Court, as the Sole Arbitrator, in case of the opinion of the expert not resolving the dispute, to enter upon reference and adjudicate the disputes inter se the parties. By agreement, the arbitration proceedings will be

conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

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

(S.K.K., CJ.)
28.04.2015

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Note:

1. Issue order copy by 06.05.2015.

2. 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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