

In the High Court of Judicature at Madras

Dated : 03.07.2015

Coram :

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

O.P.No.224 of 2015

M/s.Kirloskar Brothers Limited,
Udyog Bhavan, Tilak Road, Pune.

.. Petitioner

-VS-

1.Surana Power Ltd.,
No.29, Whites Road,
Royapettah, Chennai

2.M/s.Vinayaga Infra (India) Limited,
New No.12, Old No.72,
Thatha Muthiappan Street,
Chennai.

.. Respondents

Petition filed under Section 11 (4) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator in terms of the Act on behalf of the respondent and to resolve the disputes that have arisen between the petitioner and the respondents.

For Petitioners : Mr.Shivakumar

For Respondents : No appearance

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ORDER

The first respondent placed an order on the second respondent for erection and commissioning of 2 x 210 MV Thermal Plant, at its Raichur facility as EPC Contractor. The petitioner entered into a Sub-Contractor's Tripartite Agreement on 26.11.2011.

2.It is not necessary to go into the facts in detail, but suffice to say, disputes have arisen out of this agreement, which contains Article 6 as the arbitration clause, which reads as under:

"Jurisdiction & Arbitration

All disputes under the contracts shall be referred to for arbitration in accordance with the Indian Arbitration & Conciliation Act, 1996, as per the Terms of the Contract.

The arbitration shall be held at Chennai and the courts in Chennai shall have jurisdiction on any matter connected with any arbitration under the contracts."

3.The petitioner claims to have completed the work satisfactorily and raised invoices for which payments have not been made. It is the case of the petitioner that on 14.03.2013, a meeting was also held, where the

first respondent acknowledged its liability to the extent of Rs.2.18 crores, while material worth Rs.98 lakhs was ready for dispatch. Thereafter, some part payments were made. The petitioner claims a sum of Rs.1,61,73,052/- towards supplies and a sum of Rs.1,13,74,776/- towards ready materials and a legal notice dated 03.02.2014 has been sent calling upon the respondents to pay a sum of Rs.3,08,14,968/-. In response, on 08.02.2014, cash flow problems were pleaded. Despite lapse of time, the account has not been settled.

4. Notice was issued to the respondents in this petition, who have failed to appear despite service. It is, thus, a case of no return.

5. In view of the aforesaid facts, the existence of agreement as well as existence of disputes and the jurisdiction of the Court are not in question.

6. I, thus, as originally requested by the petitioner, appoint **Mr. Justice N.V. Balasubramanian**, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and adjudicate the dispute inter se the parties. As requested by the learned counsel for the petitioner, 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.

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

(S.K.K., CJ.)
03.07.2015

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Note: 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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