

In the High Court of Judicature at Madras

Dated : 18.12.2015

Coram :

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

O.P.No.482 of 2015

M/s.Evocon Private Limited
rep. by its Managing Director,
Mr.SCP Dhanapal.

.. Petitioner

-VS-

Highpower V Infrastructure Ltd.
rep. by its Director R.K.Venkatraman.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a sole arbitrator to adjudicate and resolve the disputes and differences that have arisen between the petitioner and the respondents in respect of Memorandum of Understanding dated 11.02.2013 entered between the petitioner and the respondents.

For Petitioner : Mr.A.Jenasenan

For Respondent : No appearance

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O R D E R

A Memorandum of Understanding was executed inter se the parties on 11.02.2013 in terms whereof the respondent agreed to

aggregate the lands described in Schedule A to the agreement to enable the developer to develop 40 acres of land. These lands located in different survey numbers are in Kuthambakkam Village, Poonamallee Taluk and out of the 40 acres, consideration had to be paid for 32 acres by the petitioner and for 8 acres by the respondent. The petitioner claims to have paid initially an amount of Rs.4 crores, as alleged, but disputes have arisen inter se the parties.

2.The aforesaid agreement contains Clauses 12 and 13 as Arbitration and Conciliation clause and the Jurisdiction Clause respectively which are reproduced as under:

"12.ARBITRATION AND CONCILIATION:

In the even tof any dispute or difference arising between the parties in regard to this agreement, they shall endeavor to settle the same by mutual negotiations / discussions. In the event of the parties hereto being unable to arrive at a mutually agreeable solution, they shall refer such dispute/difference to Arbitration. Such reference shall be to a Sole Arbitrator who shall be a person of retired District Judge. The decision of the Arbitrator shall be final and binding on the parties. The venue of the Arbitration shall be at Chennai. It is further agreed between the parties that, in case of dispute, COMPANY and DEVELOPER shall be entitled to seek such reference of the dispute jointly and not individually."

13. JURISDICTION OF COURT:

The courts within the city limits of Chennai shall alone have jurisdiction to try any disputes including Arbitration in regard to any matter relating to this Agreement."

3. The petitioner received a letter from a retired Additional Judge dated 11.05.2015 proposing to act as an Arbitrator in view of the nomination made by the respondent and seeking the consent. The petitioner vide letter dated 02.06.2015 declined to give consent and stated that they would approach the Court under Section 11 (6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator by the Court. The Arbitrator, however, appears to have decided to proceed with the matter holding the first meeting on 13.06.2015.

4. The stand of the petitioner is unequivocal that the Arbitrator can be appointed by mutual consent only or by the Court. There is no right conferred on the respondent to unilaterally appoint an Arbitrator.

5. In my view, there is a little doubt that a reading of the arbitration clause makes it quite apparent that the disputes, if any, be referred to a retired District Judge and there is no contractual right conferred on the respondent to appoint the Arbitrator. Thus, the Arbitrator

has to be appointed by mutual consent, failing which, by this Court. Thus, the unilateral appointment by the respondent of the Arbitrator, Mrs.M.Rajalakshmi, Additional District Judge (Rtd.) is null and void.

6.The respondent has not chosen to appear despite service. It is thus, a case of no return.

7.In view of aforesaid facts and circumstances, the jurisdiction of this Court is not being in question, I appoint Mr.J.Krishnamoorthy, a retired Judicial Officer, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested, 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.

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

(S.K.K., CJ.)
18.12.2015

sra

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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