

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.592 of 2015

M/s.Coastal Consolidated Structures
Pvt. Limited,
Regd. Office at
60-3-23/A, Coastal Building,
Near I.T.I. Bus Stop,
Ashok Nagar, Vijayawada,
Andhra Pradesh-520 010. .. Petitioner

-vs-

1.M/s.Karaikal Port Private Limited,
Registered Office at
Kheezhavanjoor Village,
T.R. Pattinam,
PB No.33, Karaikal-609 606.
2.M/s.MARG Limited,
Registered Office at
'Marg Axis', 4/318, Rajiv Gandhi Salai,
Kottivakkam,
Chennai-600 041. .. Respondents

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint arbitrator to adjudicate the dispute arising out of the agreement dated 24.08.2012 between the petitioner and the respondents under the Arbitration and Conciliation Act, 1996 or in the alternative, appoint a sole arbitrator by consent of parties to adjudicate the dispute arising out of the

Agreement dt. 24.08.2012 between the petitioner and the respondents under the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr.K.Elango

For Respondent : Mr.Anand Sashidaran for R1
No Appearance for R2

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O R D E R

The first respondent private Port and the second respondent Contractor had entered into contract agreements on EPC work in respect of Karaikal Port Phase 2A and 2A Extension. In execution of breakwater extension works among other works, the petitioner agreed to execute the work as a Sub-Contractor. Accordingly, on 24.8.2012, a Tripartite Agreement was executed between the petitioner and the respondents. As per the terms of agreement, among other things, the following terms were agreed:-

(a) The first respondent agreed to release and settle the due payments directly to the petitioner with effect from the date of the agreement;

(b) The second respondent and the petitioner reconciled the status of

payments due to the petitioner as rs.8.49 Crores as on 24.8.2012 and the second respondent was to issue six post dated cheques, out of which, four cheques were for equal amounts of Rs.1.31 Crores each and two cheques were for Rs.1.33 Crores and Rs.1.92 Crores;

(c) The first respondent was entitled to effect deduction of retention money at source from the payments that were to be released to the petitioner as per the terms of agreement.

2. The case of the petitioner is that the respondents have failed to make payments to the petitioner, due to which the petitioner suffered a huge loss. On 09.6.2014, the petitioner sent a letter to the first respondent claiming payments with interest by marking copy to the second respondent and also invoked the arbitration clause 19 of the agreement and requested the respondents to appoint an arbitrator on their behalf for adjudication of the disputes in question. The second respondent, though received the said letter, did not chosen to give reply.

The first respondent, by its reply dated 08.7.2014, stated that they were not liable to meet any of the demands made by the petitioner.

3. Clause 19 of the agreement reads as under:-

"19. All disputes and differences that may arise between any two Parties to this Agreement with regard to any obligations of the Parties to this Agreement or with regard to the interpretation of this Agreement shall be referred to a panel of three arbitrators where each disputing Party shall have the right to appoint one arbitrator, the third to be appointed by the two arbitrators so appointed. In the event that the dispute or difference is between all the three Parties, then such dispute shall be referred to a panel of three arbitrators, one arbitrator to be jointly appointed by the Employer and the Contractor, the second to be appointed the Sub-Contractor and the third to be appointed by the two arbitrators so appointed. The arbitration shall be governed and conducted under the provisions of the Arbitration and Conciliation Act, 1996 including its statutory modification or

restatement. The place of arbitration shall be Chennai and the proceedings shall be conducted in English."

4. Despite opportunity, the first respondent alone filed the reply and the second respondent has not filed any reply to the petition. On the last hearing, the learned counsel for first respondent stated that the first respondent has been unnecessarily dragged into the proceedings, though the disputes pertain to the works prior to 24.8.2012 and the learned counsel for the petitioner also filed some additional typed set of papers to state that some part of the claims is post 24.8.2012.

5. The learned counsel for parties now agree that the claim which is post 24.08.2012 may be decided through the process of arbitration and propose Mr. Justice G.M.Akbar Ali as the sole Arbitrator.

6. In view of the fact that the arbitration clause and the jurisdictional clause are not in dispute and the parties agree for appointment of an arbitrator, at joint request, I appoint Mr. Justice G.M.Akbar Ali, 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 aegis 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.

7. The Original Petition, accordingly, stands allowed, leaving the parties to bear their own costs.

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

//Certified to be a true copy//

Dated this the day of 2016

R.s/21.01.2016

COURT OFFICER

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

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