

In the High Court of Judicature at Madras

Dated : 27.11.2015

Coram :

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

O.P.No.831 of 2015

M/s.SIEMENS Limited
Seethakathi Business Centre,
4th and 5th Floor, No.272/688,
Anna Salai, Chennai. .. Petitioner

-vs-

M/s.MARG Limited
'Marg Axis', 4/138,
Rajiv Gandhi Salai,
Kottivakkam, Chennai. .. Respondent

Petition filed under Section 11 (6) (b) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator in terms set out in the Act to decide the claim / dispute between the Petitioner and the Respondent arising out of the Purchase Order dated 04.08.2010 and Work Order dated 02.08.2010 and Additional Work Order dated 12.06.2012.

For Petitioner : Mr.Jose John
for M/s.King & Partridge
For Respondents : Mr.K.Rajasekaran

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O R D E R

The petitioner was successful in a tender for a Works Contract for design, manufacture, supply, testing, installation and commissioning of a 110/33 KV Outdoor Switchyard for the Port facilities set up by the respondent

in Karaikal, Puducherry and Purchase Order dated 04.08.2010 for supply of equipment and a Work Order dated 02.08.2010 for the installation, testing and commissioning of the supplied equipment were executed by the respondent in favour of the petitioner. An Additional Work Order was also issued on 12.06.2012. These Work Orders are stated to be item rate contract and payment was to be made for the quantity of work done, as certified by the project in-charge at the site.

2.The petitioner claims that it completed the work for the value of Rs.5,33,89,246/- as evidenced by RA bill Nos.1 to 16, but the respondent made part payment against the RA bill leaving a balance of a sum of Rs.99,15,462.27.

3.The averments in the petition show that some disputes have arisen between the parties and on 22.01.2015, the petitioner laid a claim for the money due along with interest, while declaring suspension of work.

4.The petitioner, in order to obtain interim protection, filed applications under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'). The applications filed on the original side of this Court are O.A.Nos.325 and 326 of 2015, where interim ex parte orders are passed on 26.03.2015 and extended vide order dated 24.04.2015. It is

stated that the respondent has entered appearance and filed their reply alleging that the works had been completed and

thus, the interim applications were dismissed as infructuous.

5.The relevant aspect is the stand of the respondent in the common counter-affidavit filed in those proceedings. Suffice to say as set out in para 4 as under:

'4. ... There is a dispute with regard to the quality and quantity of the goods which has to be disputed (sic) decided by an Arbitrator.'

6.The present petition has been filed under Section 11 (6) (b) of the said Act, to appoint an Arbitrator.

7.Notice was issued to the respondent on 09.10.2015 returnable on 20.11.2015 when they entered appearance and took time to obtain requisite instructions. Learned counsel for the respondent reports lack of instructions, though he cannot dispute the reply filed as the counsel is the same. No reply to the present petition has been filed.

8.In view of the aforesaid situation, given the agreement inter se the parties containing an arbitration clause, disputes having arisen and the respondent also having taken a stand in the proceedings under Section 9 of the said Act about the existence of the said clause, territorial jurisdiction not being disputed, there is no impediment to the reference of disputes to the arbitration.

Clauses 19 and 21 containing the arbitration clause and jurisdiction are as under:

'19.ARBITRATION: Any dispute, difference or claim that may arise under this order shall be referred to Arbitration to a sole Arbitrator mutually agreed by the parties, in accordance with Arbitration and Conciliation Act 1996. The venue for arbitration shall be Chennai. This Order is subject to the jurisdiction of courts in Chennai.

21.JURISDICTION: Any difference or dispute arising out of the Work Order shall be subject to the jurisdiction of Chennai Court only.'

9.In view of the aforesaid facts and circumstances, I appoint **Mrs.Justice Prabha Sridevan, a retired Judge of this Court,** as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested by learned counsel for parties, 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.

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

Sd/ (S.K.K., CJ.)
27.11.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/18.12.2015

COURT OFFICER

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