

**In the High Court of Judicature at Madras**

**Dated : 23.03.2015**

**Coram :**

**The Hon'ble Mr.Justice M.M.Sundresh**

**O.P.No.332 of 2013**

Dr.S.Vaitheswarran

.. Petitioner

-VS-

M/s.Rajiv Gandhi Centre for Aquaculture (MPEDA)  
Ministry of Commerce & Industry,  
Government of India, rep.by the  
Project Director,  
No.3/197, Poompuhar Road,  
Karaimedu Village,  
Sattannathapuram - 609 109  
Sirkazhi Taluk, Nagapattinam District. .. Respondent

Prayer: Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 and Notification No.SRO C-2/96 dated 20.12.1996 praying to appoint an arbitrator between the petitioner and the respondent in respect of the dispute for the work of "Construction of Technology Transfer, Training and Administrative Complex at Rajiv Gandhi Centre for Aquaculture, Sirkali, Tamil Nadu.

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|----------------|---------------------------------------------------|
| For Petitioner | : Mr.V.Lakshmi Narayanan<br>for Mr.MA.P.Thangavel |
| For Respondent | : Mr.S.Parthasarathy                              |

**ORDER**

In pursuant to the work order issued on 2.8.2007 in favour of the petitioner, who is a contractor, an agreement was entered into on 10.08.2007 between the parties. Admittedly, the agreement contained an arbitration clause. The petitioner raised a final bill on 28.5.2010. Prior to the said final bill, the petitioner made a request for adhoc payment of Rs.75% of the final bill value. As both the requests were not acceded to

by the respondent, the petitioner made another request by letter dated 7.6.2010. In response to the said letter, certain amount has been released. Prior to that, the petitioner made a mercy petition on 24.3.2010. On 25.6.2010, by the minutes of the meeting, recommendations were made by the respondent authorities, the relevant portion of which reads as under:

"3. The final bill submitted by the Contractor Dr.S.Vaitheswarran is under checking for payment. The payment can be effected on the final bill in full after the approval of the Competent Authority. The Completion certificate will be issued as per the agreement after defects of liability period which will be over on 1st February, 2011.

4. 50% of the retention amount (Security deposit incl. EMD) recovered from the final bill may be released after two weeks from the date of finalising the final bill and the balance 50% can be released after 1st February 2011.

5. As regards to the amount of Rs.35.1 Lakhs withheld for imposing the penalty clause, legal opinion is suggested before taking a final decision."

2. Thus, it is clear that two issues came up for consideration before the respondent, one is with respect to the final bill submitted by the petitioner and the second is with respect to Rs.35.1 Lakhs for imposing the penalty clause. Insofar as the withheld amount of Rs.35.1 Lakhs is concerned, as per the decision in the meeting of review, a part of the amount was paid to the petitioner by proceedings dated 26.11.2010. Thus, a sum of Rs.17.5 lakhs was paid. The petitioner

received the said amount and did not make any claim thereafter. Now the question for consideration is, whether the petitioner is entitled to invoke the arbitration clause towards the claim for the alleged non-settlement of the final bill sans the withheld amount of penalty, which issue has already been concluded and thereafter has become final.

3. A perusal of the letter from the respondent to the petitioner dated 20.09.2012 as well as the earlier document would *prima facie* show that after the minutes of the meeting dated 14.6.2010, no decision was taken on the request made by the petitioner towards the settlement of final bill. Therefore, this Court is of the view that *prima facie* the question of limitation or a stale claim being raised cannot be accepted. There is no document available about any decision taken after the meeting held on the pending issue of settlement of final bill by the respondent.

4. Considering the same, this Court is inclined to direct Indian Institution of Technical Arbitrators situated at Tamil Nadu State Centre, 23/12, 5<sup>th</sup> Main Road, Kasturba Nagar, Adayar, Chennai – 600 020 (PE – 044-24412372 and Mobile No.9840289672) to appoint a Technical Engineer with adequate experience to act as an arbitrator within a

**M.M.SUNDRESH,J.**

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period of two weeks from the date of receipt of copy of this order to enter upon the reference to resolve the dispute between the parties qua the final bill claimed by the petitioner, after issuing notice to the parties and upon hearing them. The arbitrator shall pass an award as expeditiously as possible, preferably within a period of six months from the date of his appointment. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

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

23.03.2015

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**Note to Office:**

A copy of this order shall be communicated to the Indian Institution of Technical Arbitrators, Tamil Nadu State Centre, 23/12, 5<sup>th</sup> Main Road, Kasturba Nagar, Adayar, Chennai – 600 020

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