

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

O.P.No.401 of 2013

M/s.NRP Projects Private Limited
(Formerly Known as N R Patel & Co.,)
Level 1, Desabhandhu Plaza,
No.47, Whites Road, Royapettah,
Chennai-600 014. ... Petitioner

vs.

M/s.Indian Oil Corporation Limited,
(Marketing Division)
Karnataka State Office,
Indian Oil Bhavan,
No.29, P.Kalinga Rao Road,
Bengaluru. ... Respondent

Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator as per Clause 18 of the Work Order, W.O.No.IOCL/BL/P-11/GUL/WO/02 dated 24.03.2000 for the purpose of adjudicating the disputes between the petitioner and the respondent and to direct the respondent to pay the costs of this proceeding to the petitioner.

For Petitioner : M/s.K.Manoj Menon

For Respondents : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.V.Anantha Natarajan

O R D E R

A Work Order has been issued by M/s.Balmer Lawrie & Co.
<https://hcservices.ecourts.gov.in/hcservices/>

Ltd., acting as the consulting firm of the respondent, in

favour of the petitioner on 24.03.2000. The petitioner raised a dispute claiming that money due to it has not been paid and it was followed by correspondence between the parties, namely the petitioner on the one side and M/s.Balmer Lawrie & Co. Ltd., on the other side. The respondent, in and by letter dated 28.05.2012, appointed Out of Court Settlement Committee. The proceedings of the Committee went for quite some time. As the Committee has not taken appropriate steps, the petitioner sent a letter dated 06.10.2012 to the respondent expressing its desire to opt "Out of Court Settlement" preferring to go for arbitration. In the meanwhile, the Committee has submitted its report. The petitioner has invoked Arbitration Clause in and by letter dated 16.11.2012. By letter dated 26.11.2012, the respondent has informed the petitioner in the following manner:

"As per clause 18 of the subject works contract, the disputes, if any, shall be referred to the sole arbitrator of the Executive Director, Southern Region of Indian Oil Corporation Limited or some other person designated by Executive Director in his place, who is willing to act as such sole arbitrator.

Since Executive Director, Southern Region (the named Arbitrator) post is now nonexistent; you are requested to give your consent for the Director (Marketing) or his nominee to act as Arbitrator."

The petitioner sent a reply to the respondent dated 28.11.2012 stating its approval of the Director (Marketing) or his nominee as the Arbitrator to adjudicate the dispute. Even after the said communication dated 28.11.2012 by which the

petitioner has given its consent as required under arbitration clause, the present petition has been filed.

2. The learned counsel for the petitioner submitted that M/s.Balmer Lawrie & Co. Ltd., was acting as an agent on behalf of the respondent. The Work Order has been executed between the petitioner and the respondent. M/s.Balmer Lawrie & Co. Ltd., was authorized to enter into an agreement with third parties including the petitioner. The petitioner has completed the work. The communication between the parties, namely the petitioner and the respondent would also show that nowhere it is disputed about the existence of the Work Order with arbitration clause. Therefore, the stand taken by the respondent in the counter affidavit for the first time cannot be sustained.

3. *Per contra*, learned Senior Counsel for the respondent submitted that existence of the Work Order with arbitration clause itself is under dispute. The respondent denies its existence. Merely because the respondent had proceeded based upon the existence of the agreement containing arbitration clause, it cannot be said that contrary view which is factually correct be taken and therefore, this petition requires to be dismissed.

4. Records available before this Court would show that the respondent has proceeded on the premise that there exist an agreement with its arbitration clause and it is the respondent who invoked Clause 18. The petitioner merely gave

its consent. Therefore, under those circumstances, it is for the respondent to disprove the case of the petitioner on the non-existence of the agreement with its arbitration clause. The said issue will have to be decided by an arbitrator. Furthermore, the communication between the parties would also reveal that both the petitioner as well as the respondent had raised certain claims. These claims and counter claims are necessarily to be decided by an arbitrator. This Court also clarifies that it is open to the learned Arbitrator to decide all the issues including the existence of arbitration agreement.

5. Considering the same, this Court is inclined to appoint Hon'ble Mr. Justice A.S. Venkatachalamoorthy (Retd.), Former Judge Kerala and Madras High Courts and Chief Justice of Chattisgarh High Court having residence at No.V-87, V Avenue, Anna Nagar, Chennai-600040, is appointed as arbitrator to decide this issue after issuing notice to the parties and upon hearing them, the learned arbitrator may pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

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

Sd/.M.M.S.J
23.03.2015

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

R.s/10.04.2015
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

COURT OFFICER



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