

In the High Court of Judicature at Madras

Dated : 10.04.2015

Coram :

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

O.P.No.823 of 2012

M/s.Consolidated Construction Consortium Ltd.,
rep. by its Managing Director S.Sivaramkrishnan,
No.5, 2nd Link street,
C.I.T. Colony, Mylapore,
Chennai-600 004.

.. Petitioner

-VS-

M/s.Viceroy Hotels Ltd.,
8-2-120/115/14, 5th floor,
Shangrila Plaza,
Opp.KBR Park, Road No.2, Banjara Hills,
Hyderabad,
Andhra Pradesh-500 034.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes which has arisen between the Petitioner and the Respondent.

For Petitioner : Mr.S.S.Rajesh

For Respondent : Mr.Udayakar Rangarajan

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ORDER

The petitioner, carrying on the business of construction and infrastructure activities, submitted tender for construction of Hotel Building Service Apartments at MRC Nagar, Chennai to the respondent and emerged as the successful bidder, which resulted in award of contract on 26.09.2007 for a total value of Rs.108,28,31,048/-. The petitioner claims to have commenced execution of the project in pursuance to the agreement, but the respondent has committed default in making payments of certified bills, which resulted in the further execution of the project being held up. A sum of Rs.23,36,27,884/- became outstanding as on 30.06.2011 and since the amount was not paid as per the reminders, in view of the arbitration clause, the petitioner issued notice on 16.02.2012, invoking Clause 66.3 and proposing their nominee arbitrator. Despite notice being received on 18.02.2012, there was no response.

2. No reply has been filed to the present petition and it is thus a case of no return.

3. Learned counsel for the petitioner on the last date of hearing (12.03.2015) stated that as per her instructions, the matter has been settled, but wanted to verify the position. Learned counsel for the

respondent stated that he was not receiving any instructions.

4. Learned counsel for the petitioner now states that in the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, a settlement was recorded and Rs.18.00 Crores stand paid, on which, the property was to be released. The property since stands released, but the balance amount of Rs.5,36,27,884/- has not been paid and the dispute survives, as despite repeated requests, the payment is not being made.

5. In terms of arbitration Clause 66.3, each of the parties has to appoint their nominee arbitrator, who in turn would elect the Presiding Arbitrator. The petitioner has appointed their nominee arbitrator, but to no avail.

6. The learned counsel for the petitioner suggests that it would be appropriate to have an arbitration of single arbitrator nominated by this Court to save costs, especially, as the disputed amount is now narrowed down.

7. In view of the aforesaid facts and circumstances, by consent, I

appoint **Mr.Justice G.M.Akbar Ali**, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, 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.

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

(S.K.K., CJ.)
10.04.2015

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The Hon'ble Chief Justice

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