

In the High Court of Judicature at Madras**Dated : 15.07.2016****Coram :****The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice****O.P.No.439 of 2016**

M/s.Terex India Private Limited,
rep. by Srikanth Ekambaram,
Executive Director, Finance,
Registered Office: Suites # 1709-1712,
17th Floor, Narain Manzil,
Barakhamba Road,
New Delhi-110 001.
Site Office: E-18, Phase II, Expansion II,
Sipcot Industry Complex,
Hosur-635 109, Tamilnadu. ... Petitioner

-vs-

- 1.The State Industries Promotion
Corporation of Tamil Nadu Limited,
rep. by its Managing Director,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai-600 008.
- 2.The Government of Tamil Nadu,
rep. by the Secretary,
Department of Industries,
Fort St. George, Chennai-600 009,
Tamil Nadu. .. Respondents

Petition filed under Section 11 (6) (a) of the Arbitration and Conciliation Act, 1996, to appoint sole arbitrator in terms of the lease deed dated 17.10.2007 entered into between the petitioner and the first respondent, for the purpose of adjudicating upon the dispute that has arisen between the petitioner and the first respondent under the lease deed dated 17.10.2007.

For Petitioner : Mr.Vinod Kumar
For Respondents : Mrs.Sударасана Sundar for R1
Mr.STS.Murthi
Govt. Pleader for R2
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O R D E R

The petitioner claims to be the global manufacturer of a broad range of equipment, which started its operation in India in the year 2007. It has sought an allotment of land for setting up of its factory at Hosur by making an application to the first respondent, which had issued an allotment letter dated 02.07.2007 read with the amendment letter dated 10.07.2007 and modified allotment letter dated 30.07.2007, whereby 44.83 Acres of land in Plot No.E-18 in the SIPCOT Industrial Complex, Hosur was allotted to the petitioner for carrying on the manufacturing of material processing and construction equipment. The allotment letter was followed by the execution of a lease deed dated 17.10.2007 for a period of 99 years on payment of Rs.3,04,84,400/- towards plot deposit and Rs.12,19,37,500/- towards development charges. The lease deed was duly

registered and the petitioner claims to have commenced manufacturing activities in July, 2009.

2. The officials of the first respondent are stated to have caused an inspection to be made of the premises without prior notice on 19.09.2014 and thereafter, issued notices dated 19.11.2014 and 09.03.2015 *inter alia* alleging that some portion of the land allotted to the petitioner was not being utilised and thus, the petitioner was liable to surrender that extent of the land, a position denied by the petitioner. However, the first respondent has issued a notice dated 17.07.2015 asking the petitioner to surrender 5 Ares of excess land and to execute the deed of surrender within 15 days. This is what has resulted in the disputes *inter se* the parties.

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3. The lease deed *inter se* the parties contains the mode of resolution of the disputes through an arbitration and the relevant clauses are as under:-

"35. During the currency of the lease, any question of dispute or difference in relation to or in connection with the terms of the lease deed shall not be raised by the Party of the Second party and, if at all raised, such question of dispute or difference shall be referred to an Arbitrator appointed by the Government of Tamil Nadu.

36. Only the Courts situated in the City of Chennai shall have jurisdiction to decide upon any dispute or litigation between the parties to this lease deed."

The petitioner had filed O.A.No.916 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "the said Act"), where interim orders were passed in its favour on 25.08.2015 restraining the first respondent from disturbing the possession of the petitioner. The petitioner had also filed O.P.No.965 of 2015 under

Section 11 of the said Act for appointment of an Arbitrator. This matter was disposed of on 12.02.2016 noticing that the petitioner has not addressed the letter requiring appointment of an Arbitrator to the Designated Authority, though copy of the letter addressed to the first respondent was so sent. The matter was, however, resolved with an undertaking of the Government counsel that the Arbitrator would be appointed in terms of the arbitration clause within a period of 15 days from the date of receipt of the order.

4. The original order was sent by the petitioner under a covering letter dated 22.02.2016, which was received by the first respondent on 23.02.2016 and by the second respondent/Designated Authority on 24.02.2016. Despite the afroresaid assurance, no Arbitrator was appointed and the petitioner has thus been compelled to again file a petition under Section 11 (6) of the said Act on 28.04.2016.

5. Learned Government Pleader accepted notice for the respondents on 01.07.2016 and 10 days' time was granted to file the reply. No reply has been filed. But a letter dated 14.07.2016 has been produced, which is an inter departmental communication, in terms whereof a decision has been taken to appoint the General Manager of TIIC as Arbitrator.

6. It can hardly be disputed that the aforesaid does not meet the mandate of law, as the appointment is required to be made within 30 days of the receipt of the notice. In the present case, in fact, in view of the earlier proceeding, Arbitrator had to be appointed within 15 days from the receipt of that order. But the respondents kept silent for months. Thus, they have lost the right to appoint any Arbitrator.

7. The aforesaid shows that disputes have arisen *inter se* the parties, the mode of arbitration is prescribed for resolution of the disputes in the

lease deed, the respondents have lost the right to appoint an Arbitrator and the jurisdiction of this Court is not in dispute.

8. I, thus, by consent, appoint Mrs. Justice Chitra Venkatraman, 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 the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

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

Sd/S.K.K., C.J.,

15.07.2016

//Certified to be a true copy//

Dated this the day of 2016

S.s/19.09.2016

COURT OFFICER

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