

HON'BLE THE ACTING CHIEF JUSTICE JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.65 of 2016

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ORDER:

Despite service of notice, the respondent is not represented by Counsel. Heard Sri A. Srinath, Learned Counsel for the applicant.

This application, under Section 11(6) of the Arbitration & Conciliation Act, 1996, is filed on the ground that the respondent herein, despite a specific request by the applicant, chose not to appoint an arbitrator. The work order dated 29.09.2007, issued by the respondent, in favour of the petitioner, contains an arbitration clause. Clause 22 of the work order stipulates that, in the event of a dispute arising under the order, the parties agreed that they will make all attempts to resolve the disputes, arising out of or in connection with the contract, by discussion; and if, within fifteen days of the commencement of the discussions, the dispute is not resolved, the dispute shall be referred to arbitration. Clause 22 stipulates that the client (the respondent herein) shall appoint an arbitrator and his decision shall be final.

By his letter dated 29.02.2016, the applicant herein requested the respondent to appoint an arbitrator, and to inform them of such appointment to enable them to take further steps for the resolution of the disputes relating to payment of Rs.71,23,856/-. On the ground that the respondent herein did not even choose to reply, the applicant has now invoked the jurisdiction of this Court.

Sri A. Srinath, Learned Counsel for the applicant would place reliance on the judgment of the Supreme Court, in **Datar Switchgears Ltd. v. Tata Finance Ltd**^[1], in support of his submission that, in the absence of any response from the respondent to the applicant's request to appoint an arbitrator, the applicant is entitled to invoke the

jurisdiction of this Court under Section 11(6) of the Act.

In **Datar Switchgears Ltd**¹, the Supreme Court observed:-

“.....So far as cases falling under Section 11(6) are concerned such as the one before us no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court under Section 11, that would be sufficient. In other words, in cases arising under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator under Section 11(6) is forfeited.....”

It is evident that, as the respondent has chosen not to appoint an arbitrator though more than five months have elapsed after the petitioner had requested him to do so, the petitioner is entitled to invoke the jurisdiction of this Court under Section 11(6) of the Act.

Sri N. Raghava Rao, retired District Judge is appointed as the sole arbitrator and all disputes between the parties are referred to him. The Learned Arbitrator shall fix his remuneration in consultation with the parties. The costs and expenses of the secretarial assistance of the arbitration proceedings shall also be determined by the learned Arbitrator. Each party will bear the expenses of the arbitration proceedings in all respects equally. The learned Arbitrator shall complete the arbitration proceedings and publish the Award at the earliest, preferably within a period of six months from the date of entering upon reference. The Arbitrator shall, as far as possible, hold arbitration meetings at the arbitration centre in the High Court premises, 'C' Block.

The Arbitration Application is, accordingly, disposed of.

RAMESH RANGANATHAN, ACJ

Date: 05.08.2016

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[\[1\]](#) (2000) 8 SCC 151