

In the High Court of Judicature at Madras

Dated: 19.09.2017

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The Honourable **Dr.Jusitce ANITA SUMANTH**

Original Petition No.421 of 2017

Gae Projects Private Ltd.
Rep. By its Managing Director
Tower No.27, 3rd Floor,
Vellala Street, Adambakkam,
Chennai - 600 088.

.. Petitioner

-vs-

Tata Projects Ltd.,
rep. by Director
Hiranandani Knowledge Park,
11th Floor, Technology Street,
Powai, Mumbai - 400 076.

.. Respondent

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of a sole arbitrator to adjudicate on the dispute that has arisen between the petitioner and the respondent.

For Petitioner : Mr.S.Raghavan

For Respondent: Mr.Jerry V.V.Sundar
for Mr.V.Z.Victor

O R D E R

This Original Petition is filed in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, 'Act') praying for the appointment of a sole arbitrator to adjudicate

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upon disputes that have arisen between the petitioner and respondent in terms of clause 17 of various work orders entered into between 07.11.2013 and 04.11.2014.

2. Heard Mr.S.Raghavan, learned counsel for the petitioner and Mr.Jerry V.V.Sundar, learned counsel for the respondent.

3. The main objection raised by Mr.Jerry V.V.Sundar, is to the maintainability of the petition before this Court. He would, in this regard, rely upon the clause in work order dated 04.11.2014 to the effect that the petitioner is bound by the terms of the General Conditions of Contract for services (in short 'GCC') C4-HV-R2 dated 13.12.2013 that contains clause 36.0 reading thus:

"35.0 Governing Law and Jurisdiction

This Contract/Work Order shall be construed in accordance with and governed by the laws of India and in the event of any litigation the jurisdiction of this Contract shall be that of the courts at **Hyderabad, A.P.,**

India"

4. Learned counsel appearing for the petitioner would however point out that the GCC were not incorporated in any of the work orders. To this end, he would refer to an exchange of e-mail between the parties, wherein the petitioner requests for a copy of the GCC and the respondent vide e-mail dated 12.08.2016 encloses the same. Thus, according to him, it is only vide e-mail dated 12.08.2016, that GCC had been received by the petitioner and not before.

5. Mr.Raghavan would rely upon the judgment of the Supreme Court in the case of **Indian Oil Corporation Ltd. V. Nilofer Siddiqui & Ors (2015 Legal Eagle (SC) 932)** to the effect that General Conditions of Contract that have not been part of the contract/agreement when signed by the parties are not liable to be invoked. Paragraph 22 of the judgment is relevant and reads thus:-

'It was further contended by him that both the respondent Nos. 2 and 3 have fulfilled all the terms and conditions of the letter of allotment of distributorship which was given to them by IOCL. It is IOCL which has violated the said terms and conditions by not sending a copy of the standard agreement despite repeated demands made by respondent No.2 to IOCL. Both the respondent Nos. 2 and 3 started their business on 23.03.1972 on the basis of the letter of allotment. At no point of time they were made acquainted with the terms and conditions of the standard agreement by IOCL. He further submitted that the agreement which is not executed by the parties cannot be legally made enforceable against them. Therefore, the terms and conditions of the standard agreement cannot be made binding upon them as they have not executed the same. Thus, the termination of the distributorship of Indane Gas as per the terms and conditions enumerated in the said standard agreement is illegal as has been rightly held by the High Court in its reasoned judgment by answering the substantial question of law in favour of respondent No.1 & 2.'

6.He would also argue that none of the other work orders contain reference to the GCC, barring work order dated 04.11.2017.

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7. However, both the learned counsel would agree that the work orders were executed in Chennai and all payments made

pursuant thereto have been received in Chennai.

8. Thus, and without prejudice to the objection on maintainability, counsel for the respondent would agree on the appointment of a Senior Advocate to adjudicate upon the disputes admittedly existing as between the parties.

9. Upon suggestion of both learned counsel for the parties and their concurrence, I appoint Mr.P.H.Arvinth Pandian, Senior Advocate, residing at No.115, Luz Church Road, Mylapore - 600 004 as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, 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 his remuneration and other incidental expenses. The venue of arbitration, as agreed to between the parties in terms of Clause 17 and the work order entered into on various dates 7.11.2013 to 4.11.2014, shall be Hyderabad, Andhra Pradesh.

10.The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

sd/.A.S.M.J
19.09.2017

//Certified to be true copy//
Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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