

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2017

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.93 of 2017

M/s.B.E.Billimoria & Co. Limited,
rep. by its Managing Director. .. Petitioner

-vs-

1.The Director,
Engineering Services Group,
Indira Gandhi Centre for
Atomic Research – Kalpakkam,
Department of Atomic Energy, Kalpakkam.

2.P.Kashyap .. Respondents

Prayer: Petition filed under Section 11(4) read with Section 14 of the Arbitration & Conciliation Act, 1996 to terminate the mandate of the present arbitral tribunal (comprising of the second respondent) and appoint an independent Arbitrator to arbitrate all the disputes and claims arising out of the Agreement dated 03.03.2011 and to direct the respondent to pay the cost of the petition.

For Petitioner : Ms.M.Vaidyanathan

For Respondents : Mr.Rabu Manohar

ORDER

This petition has been filed seeking termination of the mandate of the present Arbitral Tribunal, the second respondent herein and

appointment of a new Arbitrator under Clause 25 of the Agreement for Construction of Head End Cells (Balance Works) for DFRP at IGCAR Kalpakkam and Allied Works dated 03.03.2011.

2.Learned counsel for the petitioner would submit that an agreement had been entered into between the parties on 03.03.2011 for Construction of Head End Cells (Balance Works) for DFRP at IGCAR Kalpakkam and Allied Works. On account of disputes that arise between the parties, the dispute resolution clause was invoked. Clause 25 dealing with the settlement of disputes and arbitration and contains a condition that the appointment of Arbitrator may be made only by the Director, IGCAR/Secretary, DAE and if for any reason that it is not possible, the matter shall not be referred to arbitration at all.

3.It appears that the second respondent had expressed his willingness to his nomination as a Sole Arbitrator. However, the nomination is hit by clause 22 of Schedule V of the Arbitration and Conciliation Act 1996 which prohibits a close relationship between the Arbitrator and a party to the proceeding. The second respondent was employed in the Nuclear Power Corporation of India Limited as an Additional General Manager (Vigilance). Since the Nuclear Power Corporation of India Limited is directly controlled by the Ministry

Atomic Energy, there is a close relationship between respondents 1 and 2.

4.The learned counsel for the first respondent does not dispute the aforesaid factual position and as such the prayer for termination of the mandate of the second respondent and appointment of Arbitrator are accepted.

5.They brings me to the second aspect of the matter as to who would take the place of the second respondent Arbitrator. The Director, IGCAR has suggested the nominations of two persons namely Mr.S.Pattabiraman, Principal Chief Engineer (Civil), BSNL, (retired) and V.R.Rengasamy, Chief Engineer (retired). Both learned counsel agree that Mr.S.Pattabiraman may be appointed as Arbitrator to resolve the disputes arising out of agreement dated 03.03.2011.

6.I, thus, appoint Mr.S.Pattabiraman, Principal Chief Engineer (Civil), BSNL, Tamil Nadu Circle, (retired), 3/380, (Plot 23) Vaigai Street, Ganga Nagar, Madipakkam, Chennai - 600 091, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably

DR.ANITA SUMANTH,J.

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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, which shall be borne by both the parties equally. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre in accordance with the Madras High Court Arbitration Rules.

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

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27.06.2017

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