

In the High Court of Judicature at Madras

Dated : 03.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.704 of 2016

Indian Commerce & Industries Co.
Private Limited,
rep. by its Director Mr.C.Ravindran,
Beehive Buildings,
57, Prakasam Road,
Broadway, Chennai – 600 108.

.. Petitioner

-VS-

OK Play Auto Private Lintied,
124, New Manglapuri,
Mehrauli,
New Delhi – 110 030.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint sole arbitrator mutually acceptable to the petitioner and the respondent and fix the venue of arbitration at Chennai to resolve the disputes which have arisen between the petitioner and the respondent.

For Petitioner : Ms.G.Meera
for M/s.A.K.Mylsamy & Asso.

For Respondent : Mr.Anirudh Krishnan

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ORDER

This petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to “the said Act”) for appointment of Sole Arbitrator to resolve the disputes, which have arisen between the petitioner and the respondent.

2. It is the case of the petitioner that the respondent in the year 2011 floated a tender for pre-engineered building service (PEB work) for its factory building at Non – SEZ, Phase-III, Mugundarayapuram, Ranipet, Vellore through its Architects & Engineers. The petitioner sent its proposal and revised proposals in respect of PEB work of the respondent to the Architects on 27.6.2011, 19.8.2011 and 20.08.2011 respectively. Various discussions were held and finally, the respondent placed its job/purchase order on the petitioner vide its letter dt. 29.8.2011. The total contract value was fixed at Rs.2,47,28,726/-. The petitioner acknowledged the purchase order vide its letter dated 29.09.2011 and proceeded with the PEB work at Ranipet site of the respondent. After the commencement of PEB work by the petitioner and till its completion in August, 2012, the petitioner had raised several invoices on the respondent. The respondent did not make full payment to one of the invoices. The petitioner in good faith completed the entire PEB work in the interests of the respondent but the respondent

chose not to pay the entire outstanding payment of the final invoice dt. 23.8.2012, which was certified by the Architect on 29.8.2012. Despite continuously contacting the respondent for payments of the outstanding invoice,, the respondent failed to pay the payments. After exchange of e-mail and reply e-mail between the petitioner and the respondent, finally the petitioner had sent its letter on 17.4.2015 calling upon the respondent to make the outstanding payment of Rs.29,15,623/-. The respondent sent its reply notice through the counsel on 05.6.2015, which was also replied by the petitioner through on 11.6.2015 calling upon the respondent to pay the outstanding payment of Rs.29,15,623/-. Thus, disputes have arisen between the petitioner and the respondent. Hence, this petition.

3. Resisting the petition, the respondent has filed the counter stating that prior to the institution of the present petition, the respondent had already filed a petition under Section 11(6) of the said Act before the Delhi High Court on 11.8.2016 and the same is pending for consideration. Therefore, the present petition is barred in view of Section 42 of the Act and it is only the Delhi High Court which will have jurisdiction and prays for dismissal of the petition.

4. Heard Ms.G.Meera, learned counsel for the petitioner and Mr.Anirudh Krishnan, learned counsel for the respondent.

5. The learned counsel for the petitioner submits that the respondent has failed to settle the outstanding payments and thus, disputes have arisen between the petitioner and the respondent. He further submits that the contract undertaken by the petitioner is at Ranipet and the arbitration Clause also stipulates that if any disputes arise, the venue is at Chennai. Since the respondent failed to settle the outstanding bills and disputes having arisen and the jurisdiction is at Chennai Courts, the petitioner has filed the present petition before this Court seeking appointment of Sole Arbitrator to resolve the disputes.

6. Per contra, the learned counsel for the respondent states that prior to the institution of the present petition, the respondent had already filed a petition under Section 11(6) of the said Act before the Delhi High Court and the same is pending for consideration. Since the proceedings initiated before the Delhi High Court are prior on, as per Section 11 (11) of the said Act, the present petition is liable to be dismissed. In support of his contention, the learned counsel for the respondent relied upon the

decision of the Karnataka High Court in ***ILR 2006 KAR 4449 (Hotel Leelaventure Limited v. Appejay Oxford Bookstores Pvt. Ltd.)***.

7. The petitioner has filed the present petition on 15.09.2016. The respondent has filed its petition under Section 11 of the said Act before Delhi High Court on 11.08.2016. Clause 40 of the tender is the arbitration clause, which reads as under:-

“The Contract and all matters arising from or connected with the Contract including validity thereof shall be subject to laws in India and the parties irrevocably submit to the jurisdiction of Courts in India.

All disputes arising from this Contract shall be deemed to have arisen in Chennai and referred by either party to Arbitration in accordance with the Indian Arbitration Act in force. The venue of Arbitration shall be Chennai.

Further disagreement, if any, after the Arbitration Award may be resolved through Courts of Law in Chennai.”

8. Section 11 (11) of the said Act reads as under:-

“Where more than one request has been made under sub – section (4) or sub – section (5) or sub – section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub – section shall alone be competent to decide on the request.”

9. A reading of Section 11 (11) of the said Act makes it clear that when more than one request is made invoking the arbitration clause before different High Courts, the High Court to which the request has been first made shall alone be competent to decide on the request and that the High Court to which such request is made subsequently will have no jurisdiction to entertain such petition.

10. The Single Judge of Karnataka High Court, while dealing with the similar issue in ***Hotel Leelaventure Limited*** case (cited supra), held as under:-

“7. A reading of the aforesaid provision makes it clear, that, when more than one request is made invoking the arbitration clause under an agreement before different High Courts, the High Court to which the request has been first made shall alone be competent to decide on the request. Impliedly it follows that the High Court to which such request is made subsequently will have no jurisdiction to entertain such application. Therefore, what is to be ascertained in such a circumstances is to find out the date on which such requests are made in different High Courts and then find out in point of time which is the High Court which is first approached, and it is that High Court alone, shall have jurisdiction to decide the request for appointment of arbitrator. Thus the jurisdiction of the other High Court is barred.”

11. As stated above, the present petition was filed by the petitioner before this Court on 15.09.2016 and the respondent had filed its petition seeking appointment of an Arbitrator before the Delhi High Court

on 11.08.2016. The filing of the petition before the Delhi High Court is not disputed by the petitioner.

12. In view of express provision in Section 11 (11) of the said Act, if a request for appointment of an Arbitrator is made by the parties in two Courts, the Court to which such request is made at first point of time shall alone have the jurisdiction and the High Court to which request is made subsequent to that has no jurisdiction. Therefore, without expressing any opinion as to whether the place of arbitration is at Chennai or at Delhi and also merits of the matter, a decision has to be taken only by the Delhi High Court after considering the case of the parties. Further, all the contentions urged by the parties are left open to be agitated before the Delhi High Court, if and when they are raised.

13. Accordingly, the petition is dismissed, leaving the parties to bear their own costs.

(H.G.R., ACJ.)
03.03.2017

Index : Yes/No
Internet : Yes/No
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The Hon'ble Acting Chief Justice

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