

In the High Court of Judicature at Madras

Dated : 10.02.2017

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.775 of 2016

Vedanta Limited
Unit: Sterlite Copper,
Rep. by Mr.Satyapriya, Head-Legal,
Sterlite Copper. .. Petitioner

-VS-

Three Star Shipping Services
Rep. by its Sole Proprietor,
Mr.Vincent Rajan. .. Respondent

Petition filed under Section 11 (6) (b) of the Arbitration and Conciliation Act, 1996, to appoint the Sole Arbitrator to adjudicate upon the differences and disputes between the parties in terms of the contract dated 01.08.2012.

For Petitioner : Mr.Rahul Balaji

For Respondents : Notice served. No appearance

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ORDER

M/s.Sterlite Industries (India) Limited entered into a contract with the respondent on 01.08.2012 for stevedoring, clearing, forwarding, transportation and delivery of steam coal from Merchant Vessels through VOC Port, Thoothukudi to the petitioner's premises/the petitioner's external warehouses/the petitioner's nominated yard. The term of the contract was from 01.08.2012 to 31.07.2013, which was later extended till 31.12.2013 vide amendment dated 16.11.2013. The respondent is alleged to have handled 9 shipments of steam coal of Indonesian origin under the aforesaid contract and during reconciliation of the cargo received at the Tuticorin Port, it was found that there was shortage of 10,480 MTs of coal, which though received, was not delivered to the plant site as per the terms of the contract. This is what has given rise to the dispute.

2.The petitioner is the successor-in-interest of M/s.Sterlite Industries (India) Limited in pursuance to a scheme of amalgamation and arrangement as sanctioned by the Hon'ble High Court of Bombay (Goa Bench) and the High Court of Madras vide orders dated 03.04.2013 and 25.07.2013 respectively.

3.The contract in question contained the dispute resolution clause which envisages a reference for arbitration in case of disputes "generally be made to a sole Arbitrator mutually agreed between the parties. However, in failure of the parties to arrive at a sole Arbitrator, arbitration shall be conducted by an Arbitral tribunal comprising three arbitrators, one appointed by each the buyer and the seller and the third appointed by the arbitrators so appointed." The venue of arbitration is to be at Tuticorin.

4.In view of the disputes, the two parties nominated their arbitrators, but they have been unable to agree on the Presiding Arbitrator. This necessitated the present petition where the prayer made is for appointment of a sole Arbitrator.

5.The respondent has chosen not to appear despite service. In fact, the learned counsel for the petitioner had taken time to see if the learned counsel for the respondent appearing in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, would consent to appear in the present proceedings, but he states that there has been no positive response.

6. In view of the aforesaid, the allegations of the petitioner remain unrebutted about the agreement, arbitration clause and existence of disputes as also the jurisdiction of this Court. However, the prayer as framed cannot be granted by the Court because there is no agreement for a sole Arbitrator as envisaged in the arbitration clause which may have been possible if the respondent had entered appearance. Thus, this Court would have to appoint the third Presiding Arbitrator.

7. I, thus, appoint **Mr. Justice I. David Christian, a retired Judge of this Court**, as the Presiding Arbitrator to enter upon the reference and along with the two other nominated Arbitrators, adjudicate the disputes inter se the parties, with the venue of arbitration at Tuticorin. The arbitration proceedings and the parties will be governed by the Rules of the Madras High Court Arbitration Centre.

The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., C.J.)
10.02.2017

sra

Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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