

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.63 2015

ORDER:

This application, under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') is filed by the applicant seeking to resolve the dispute by an arbitrator. Clause 26 of the work order for Design, supply and supervision of Reinforced Earth System as per RECOs standard design and drawing at Bhopal Bye pass Road project Site, dated 14.02.2012 reads as under:

Clause 26 : Any dispute relating to the price, quantity, quality, payment or any other matter associated with this Work Order shall be settled by Transstroy and Sub Contractor through arbitration at Hyderabad in accordance with the Laws relating to arbitration in India. In case disputes are not settled through arbitration, the courts at Hyderabad India shall have the jurisdiction. Please acknowledge receipt of this order and commencement the work at our project site immediately.

Sri C.V. Narasimham, Learned Counsel for the applicant, would submit that, in terms of clause 26, the dispute is required to be referred to arbitration and, though the applicant had sought appointment of an arbitrator by way of their notice dated 26.11.2014, the respondents have not chosen to appoint any arbitrator necessitating their having to invoke the jurisdiction of this Court under Section 11 of the 1996 Act.

Sri Shyam S. Agarwal, Learned Counsel for the respondents, would contend that Clause 26 is vague; it talks of settlement through arbitration, failing which to have the dispute adjudicated before a Civil Court; and, instead, the parties be directed to settle the disputes through mediation. Sri C.V. Narasimham, Learned Counsel for the

applicant, would submit that no useful purpose would be served in having the matter sent for mediation, as the applicants' repeated efforts, to have the matter resolved, was unsuccessful.

As both the parties are not in agreement regarding resolution of the dispute through mediation, it is necessary that the question, whether there exists an arbitration agreement, be resolved as Section 11(6-A) of the 1996 Act requires the High Court, while considering any application under Section 11(4) and (5), to examine the existence of an arbitration agreement. Clause 26, as afore-extracted, is in two parts. The first limb clearly stipulates that any dispute relating to price, quantity, quality, payment or any other matter, associated with the work order, shall be settled by the parties through arbitration at Hyderabad in accordance with the laws relating to arbitration in India. Reference to the laws of arbitration in India can only mean the 1996 Act, and clause 26 requires such disputes to be settled through arbitration at Hyderabad. The **second** limb of clause 26 stipulates that, in case the disputes are not settled through arbitration, the Courts at Hyderabad shall have jurisdiction. While the second limb of Clause 26 is not happily worded, as the question of settlement of a dispute through arbitration failing which to approach the Courts at Hyderabad is not a course available under the 1996 Act, the fact remains that the first limb of clause 26 is clear and unambiguous, and requires any dispute between the parties to be settled through arbitration at Hyderabad in accordance with the laws relating to arbitration in India which is the 1996 Act.

It is clear, therefore, that there exists an arbitration agreement between the parties and, in terms thereof, the matter is required to be

settled by an arbitrator in accordance with the provisions of the 1996 Act.

I consider it appropriate, in such circumstances, to appoint Sri T. Ashok Kumar, Retired District Judge, 101, Bapuji Nagar, Habsiguda, Ratna Nidhi Residency, Hyderabad as the arbitrator to adjudicate the disputes in accordance with law. The Learned arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He shall complete the arbitration proceedings, and pass an award at the earliest, preferably within a period of six months from the date of commencement of arbitral proceedings. He shall hold sittings, as far as possible, in the mediation centre of the High Court.

The arbitration application, is accordingly, disposed of. No costs.

RAMESH RANGANATHAN, ACJ

Date: 01.09.2017

MRKR