

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Arbitration Application No.6 of 2016

ORDER:

This arbitration application, under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), is filed by M/s.Multiwal Pulp & Board Mills Pvt. Ltd. seeking appointment of an arbitrator to resolve the disputes arising out of the Memorandum of Understanding dated 04.04.2011, and the supplemental agreement to the Memorandum of Understanding dated 20.10.2012.

The Memorandum of Understanding dated 04.04.2011, entered into between the applicant and the respondent, contains an arbitration clause. Clause 18 of the said MoU stipulates that, in case of any dispute, the matter shall be referred to an arbitrator to be appointed by both the parties by their mutual consent. Subsequently, a supplemental agreement was entered into on 20.10.2012 between the applicant and the respondent. The said agreement dated 20.10.2012 records that it is in supplemental to the MoU dated 04.04.2011 between the same parties. Even the supplemental agreement dated 20.10.2012 contains an arbitration clause. Clause 12 thereof stipulates that, in case of disputes/differences arising out of this agreement, the matter shall be referred to the mutually agreed arbitrators whose decision shall be final and binding; and the arbitration proceedings shall be conducted at Hyderabad. Pursuant thereto, the petitioner claims to have sent a legal notice on 23.03.2013 calling upon the respondent to appoint an arbitrator; and, on the ground that no arbitrator was appointed, they have invoked the jurisdiction of this Court.

Sri P.Rajendra Prasad, Learned Counsel for the respondent, put forth his submissions on merits contending, among others, that the applicant had resorted to forgery of certain documents which were mortgaged with the bank to obtain a loan. He, however, fairly stated that both the MoU dated 04.04.2011 and the supplemental agreement dated 20.10.2012 have been signed by the applicant and the respondent; and the genuineness of these documents is not in dispute.

The scope of enquiry, in an application under Section 11(5) & (6) of the Act, is limited. This Court is merely required to confine its examination, in terms of Section 11(6-A) of the Act, to ascertain whether there exists an arbitration agreement between the parties to the application filed under Section 11(5) & (6) of the Act. All other matters, including allegations of forgery of documents, other than the arbitration agreement, are required to be considered by the arbitrator appointed by this Court.

Sri P.Rajendra Prasad, Learned Counsel for the respondent, would submit that the respondent does not have the financial wherewithal to meet the arbitration fees of a retired High Court Judge. Considering the submission of the Learned Counsel, I consider it appropriate to appoint Sri Patil Vittal Rao, Retired District Judge, R/o. H.No.3-3-820/4, Kachiguda, Hyderabad, as the sole arbitrator to resolve the disputes arising out of the MoU dated 04.04.2011, and the supplemental agreement dated 20.10.2012, entered into between both the parties to this application.

The Learned arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He shall complete 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 is also requested to hold sittings, as far as possible, in the mediation centre of the High Court.

The Arbitration Application, is accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

Date:11.08.2017
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