

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 17TH DAY OF SEPTEMBER 2018

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.P. No.321 of 2018

In the matter of Arbitration
and Conciliation Act, 1996

And

In the matter of Agreement in
ITT dated 01.08.2013 read with
Work orders dated 30.09.2013
between SAIL Refractory
Company Limited and Gurubani
Security Private Limited

Gurubani Security Pvt. Ltd.,
rep. by its General Manager,
Plot No.90, Surya Enclave Road,
No.3, Near LIC City Branch-14,
Tirumalgiri, Secunderabad-500 015.

... Petitioner

-Versus-

SAIL Refractory Company Limited,
rep. by its Chief Operating Officer,
Post Box No.565, Suramangalam,
Salem-636 005.

... Respondent

Original Petition praying that this Hon'ble Court may be pleased to appoint suitable qualified person as Arbitrator in terms of the Agreement in ITT dated 01.08.2013 read with Work Orders dated 30.09.2013 to adjudicate the disputes between the petitioner and the respondent.

This Original Petition coming on this day before this court for hearing, the court made the following order:-

The petitioner has filed the above original application for appointment for Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The petitioner in O.P.No.321 of 2018 has provided security service to the respondent by way of Work Order No.530056 dated 30.09.2013. The said Work Order contemplates resolution of disputes between the parties in terms of Clause 19 (1) General Conditions of Contract for Job Contracts vide Annexure 2 to the Tender Document S/T-08/13-14. Clause 19 reads under:-

19. RESOLUTION OF DISPUTES:

19.1 CONCILIATION:

19.1.1 Any dispute or difference whatsoever arising between the parties relating to or arising out of contract shall be settled first by conciliation in accordance with the Rules of Conciliation of SCOPE and the settlement so rendered between the parties in pursuance thereof shall be binding of the parties.

19.2 ARBITRATION:

19.2.1. In the event the dispute/difference is not resolved through

conciliation in accordance with the Rules of Conciliation of SCOPE, the matter shall be referred for a decision to a Sole Arbitrator to be appointed by the C.O.O. of the company. The C.O.O. of the company shall notify to the Contractor/Purchaser three names out of which one can be appointed as the Sole Arbitrator with the consent of both the parties. In case the other party/ies do not agree to the appointment of the Sole Arbitrator to be appointed by the C.O.O., it will be substituted by the Arbitration Clause.

19.2.2. Any dispute or difference whatsoever arising between the parties and/ or relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof, shall be settled by Arbitration in accordance with the Rules of Arbitration of SCOPE and the award made in pursuance thereof shall be final and binding on the parties.

19.3. Accepted matters as per the contract shall not be the subject matter of conciliation/Arbitration.

19.4 Work/supply under the contract shall be continued by the Contractor/Supplier under the contract pending Conciliation/Arbitration proceedings and recourse to Conciliation/Arbitration shall not become a bar to continuing with the contracted work/supply.

19.5 The venue of Conciliation/Arbitration shall be Salem (Tamil Nadu)

19.6 The Courts at Salem alone shall have the jurisdiction over all matter of disputes arising out of the contract to the exclusion of all other courts.

3. As per the contract/Work Order, the conditions in the tender document including General Conditions of the contract shall prevail.

4. The disputes have arisen as a result of which the applicant invoked the arbitration clause vide legal notice dated 17.03.2017. Thereafter, another remainder was sent on 13.06.2017 asking the respondent to start conciliation proceedings as per the contract without prejudice to their right.

5. The respondent in its reply to the legal notice dated 10.07.2017 denied the liability on merits but neither asked the petitioner to come for conciliation nor consented for resolution of dispute by arbitration. It was under these circumstances, the above petition came to be filed by the petitioner.

6. After notice was ordered on the respondent on 07.06.2018, the respondent entered appearance through counsel and has defended conduct of the respondent and has prayed for dismissal of the above petition primarily for violation of Clause 19 of Rules of Conciliation and Arbitration applicable for resolution of disputes between the parties.

7. The present petition is mainly contested on the ground that the petitioner ought to have first resorted to conciliation and thereafter opted for arbitration under Scope's Rule of Conciliation and Arbitration respectively therefore the present petition is without jurisdiction.

8. I have gone through the Scope Forum of Conciliation

and Arbitration (SFCA), 2003. Under the Rules, conciliation has to be on voluntary basis between the parties desirous of settling the dispute under the conciliation mechanism.

9. The petitioner by notice dated 17.03.2017 had specially asked the respondent to refer the case for conciliation in accordance with the Rules of the SCOPE at the earliest. Thereafter, the petitioner requested the respondent to forward the copy of the Rules of the Conciliation and Arbitration to enable the petitioner to participate in the same endeavour. The respondent has not come forward for conciliation.

10. Another remainder dated 30.06.2017 was sent to the respondent wherein the petitioner called upon the respondent for appointment of an arbitrator as per Clause 19.2 of the agreement Annexure-A vide Tender Document.

11. The respondent by their reply dated 10.07.2017 while refused for conciliation and for appointment of an arbitrator. Thus, the respondent has ceded its right for appointment under Clause 19.1 of the Rule of Conciliation and Arbitration, 2003.

12. Failure to provide the copies of the arbitration rules of SCOPE Forum of Conciliation and Arbitration (SFCA) also shows the respondent has deliberately delayed and has tried shut out the petitioner from their legitimate endeavour to resolve the disputes under the aegis SCOPE of Rule of Conciliation and Arbitration, 2003.

13. The respondent has not furnished a copy of the SCOPE Rules of Conciliation and Arbitration, 2003 to the applicant. In absence of the same, the petitioner can hardly be blamed for not approaching SCOPE for Conciliation and for appointment of an Arbitrator under Clause 19.2.2 of the Tender document.

14. As per clause 19.2.2. of the Tender document dispute if any is to be resolved by a sole arbitrator under the aegis of SCOPE Rules of Conciliation and Arbitration , 2003.

15. As per the petition, the amount that is due to Rs.59,59,384/- out of which, the respondent has admitted Rs.19,60,465/-.

16. As per clause of the SCOPE Rules of Conciliation and Arbitration, (2003) which reads as follows:

8(i) The Arbitral Tribunal shall consist of a sole arbitrator, where claim, if any, does not exceed Rs.Five Crores.

ii) Where the claim exceeds Rs.Five Crore, the parties to the dispute unless otherwise agree to refer to a Sole Arbitrator, the Arbitral Tribunal shall consist of three Arbitrators.

17. Thus, dispute if any has to be resolved by a sole arbitrator to be appointed for the panel of arbitrator of Standing Conference of Public Enterprises (SCOPE). The Secretariat of the SCOPE is required to maintain a panel of Arbitrators. Court can intervene and appoint an arbitrator under Section 11(6)(c) of the Act only if the institution fails to perform the function entrusted to it. In this case, SCOPE did not have an opportunity to appoint a Sole Arbitrator to resolve the dispute as the petitioner did not have a copy of the SCOPE Rule of Conciliation and Arbitration 2003.

18. In view of the above, the petitioner is directed to approach the SCOPE having office at 1st Floor, "SCOPE Complex", 7 Lodi Road, New Delhi-110003, within 30 days from the receipt of a copy of this order with the request for appointment of sole arbitrator to adjudicate the disputes between the parties. The respondent shall co-operate in the arbitration proceedings. If SCOPE does not appoint a Sole Arbitrator, it will be open for the petitioner to approach this Court. However, for the present the petition is pre-mature and the Original Petition is closed with the above observation.

Sd/-C.S.N.J

17/09/2018

//Certified to be true copy//

Dated at Madras this the day of 2019.
JJ 22/03/2019

COURT OFFICER(O.S.)

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