

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Arbitration Application No.56 of 2017

ORDER:

Despite service of notice, neither are the respondents present nor are they represented through Counsel. Heard Sri G.Arun, Learned Counsel for the applicant.

The present application is filed under Section 11(4) and (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator on behalf of the respondents. The share subscription agreement entered into between the applicant on the one hand, and the respondents on the other, contains an arbitration clause in Clause 14.17 of the said agreement and reads thus:

“14.17. Dispute Resolution:

Any claim or dispute arising out of or in relation to this Agreement shall be subject to resolution by arbitration by a tribunal of three arbitrators. The Investor and the Promoters will be entitled to appoint one arbitrator each. The third arbitrator shall be appointed by the two arbitrators appointed by the Parties. The arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996, to be conducted in the English language at Hyderabad.”

A shareholders agreement was also entered into between the very same parties on 28.12.2006, and the said agreement also contains an arbitration clause in Clause 13.17, which reads thus:

“13.17. Dispute Resolution:

Any claim or dispute arising out of or in relation to this Agreement shall be subject to resolution by arbitration by a tribunal of three arbitrators. The Investor and the Promoters will be entitled to appoint one arbitrator each. The third arbitrator shall be appointed by the two arbitrators appointed by the Parties. The arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996, to be conducted in the English language at Hyderabad.”

By a fresh certificate of incorporation consequent upon the change of name dated 22.02.2007, the name of the first respondent was changed from “*Gati Infrastructure Chuzachen Power Private Limited*” to “*Amrit Jal Ventures Private Limited*”. The applicant sent a letter to the respondents on 07.03.2017 informing them that they had appointed Sri Justice V.Suri Appa Rao, a Retired Judge of this Court, as the arbitrator. On the ground that no reply was forthcoming from them,

the applicant has invoked the jurisdiction of this Court seeking appointment of an arbitrator on behalf of the respondents. Since the disputed claim is around Rs.229 Crores, Sri G.Arun, Learned Counsel for the applicant, would submit that a retired Judge of this Court be appointed as an arbitrator on behalf of the respondents.

I consider it appropriate, therefore, to appoint Sri Justice Nisar Ahmad Kakru, Former Chief Justice of this Court, R/o.X-19, Hauzkhas Enclave, 2nd Floor, New Delhi, as an arbitrator, on behalf of the respondents. The Learned Arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He is requested to 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 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:05.01.2018.

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