

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.30 OF 2018

ORDER:

This is an Application for a measure under Section 11(6) of the Arbitration and Conciliation Act, 1996; “for short, the A&C Act”.

2. Heard learned counsel for parties and perused the application and the counter affidavit filed on behalf of the respondent as well as the documents relied on by the parties.

3. It is not in dispute that clause 19 of the Agreement, dated 25.02.2008, entered into between the parties, provides for arbitration. The respondent has denied the claim with reference to facts and also pleading that the claims raised are beyond the scope of arbitration in terms of the agreement.

4. The arbitrability of the disputes as between the parties, on the facts and circumstances of the case, is a mixed question of fact and law and is not to be gone into (See **Arasmeta Captive Power Company Private Limited vs. Lafarge India Private Limited**¹). It is all the more so, having particular regard to sub-section (6A) of Section 11 of the A&C Act, which enjoins that this Court should confine its consideration to the examination of the existence of arbitration agreement.

5. The institution to which arbitration was to be entrusted, as per the procedure agreed to between the parties, has failed to act under that procedure. The plea of the respondent that the arbitrator could not be appointed due to administrative delay cannot be a

¹ AIR 2014 SC 525

ground to deny recourse to requisite measure in terms of Section 11(6) of the A&C Act.

6. For the aforesaid reasons, this application is entitled to succeed.

7. In the result, this Arbitration Application is allowed appointing an Arbitrator.

8. Accordingly, Sri Justice A.Shankar Narayana, a former Judge of this Court, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the A&C Act. No order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

14.09.2018
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