

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

ARBITRATION APPLICATION No.101 OF 2011

ORDER:

This arbitration request under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is founded on Operation and Maintenance Agreement, dated 12.05.1999 entered into by the respondent with BSES Limited for the operation and maintenance of its 20 MV diesel fired electric generating facility located at Bambooflat, Port Blair, Andaman and Nicobar Islands.

2. It is the plea of the applicant that BSES Limited has assigned all its rights under that agreement to Caterpillar Commercials Private Limited, a sister concern of the applicant, with the consent of the respondent. In spite of several invoices raised by the applicant, the respondent failed to make payments and as such, the applicant terminated the Agreement with effect from 01.03.2008 invoking clause 8.3(b) of the Agreement, by its letter dated 22.02.2008. Pursuant to the same, the respondent entered into a discussion over reconciliation of the issue and that the respondent assured the applicant to pay the entire due amount and hence, the applicant is continuing its business with the respondent for long term relationship. Thereafter, the respondent made partial payments, which were accepted by the applicant under protest. The applicant issued a letter, dated 20.08.2010 demanding the due amount and the respondent by its letter dated 16.09.2010 denied the claims made by the applicant.

3. The Agreement, dated 12.05.1999 as between the parties is placed on record. Clause 12.4(a) of that agreement contains arbitration clause. It reads as follows:-

12.4 Arbitration.

(a) Subject to Section 15.24, any dispute that has not been resolved within the Respondent Period, or that is not subject to resolution pursuant to Section 12.3, shall be resolved by final and binding arbitration in New Delhi, India in accordance with the Indian Arbitration and Reconciliation Act of 1996 ("the Indian Arbitration Rules"). There shall be three (3) arbitrators, each of whom shall be neutral, independent and impartial. Either Party may make demand for arbitration in writing to the other Party, setting forth the nature of the Dispute, the amount involved, if any, the remedies sought, and the name of the arbitrator appointed by the Party demanding arbitration. The demand for arbitration shall be made within twenty (20) days after the expiration of the Resolution Period and in no event shall it be made when institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations. Within ten (10) days after any demand for arbitration under this Section 12.4, the other Party shall name its arbitrator, or in default thereof, such arbitrator shall be named pursuant to the Indian Arbitration Rules. The two (2) arbitrators so selected shall name a third arbitrator within seven (7) days after selection of the second arbitrator, or, in the absence of agreement on a third arbitrator by the two (2) arbitrators so appointed, a third arbitrator shall be appointed pursuant to the Indian Arbitration Rules. At least one of the arbitrators named or appointed under this Section 12.4 shall be an attorney-at-law licensed to practice in India. The arbitration hearing shall commence not later than sixty (60) days after the date of the original demand under this Section 12.4.

4. The respondent has not contested the matter. No counter affidavit is filed. There is no dispute as to the existence of the arbitration agreement.

5. Under such circumstances, due measure is to be taken under Section 11(6) of the Act by appointing an Arbitrator.

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

7. Sri M.Kanthaiah, Retired District and Sessions Judge, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent and the said Arbitrator shall enter on reference and proceed with, as enjoined by the Act.

10.08.2018
Pln/vs



THOTTATHIL B. RADHAKRISHNAN, CJ