

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.45 of 2012

ORDER:

This 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 respondent. The applicant was issued a purchase order by the respondent for supply of 200 TPH 3 stage NW crushing and screening plant. The total value of the unit was Rs.3.8 crores, and 10% thereof was to be retained till completion of the performance period. On the ground that this 10% amount, for Rs.38 lakhs, was not paid, the applicant issued several notices; and, eventually by order dated 23.02.2011, they informed the respondent that they proposed to initiate arbitration proceedings as contemplated under the Purchase Order. They were proposing the name of Justice Sri Devinder Gupta, Retired Chief Justice of this Court, as one of the arbitrators for resolution of the disputes. They requested the respondent to nominate their arbitrator, failing which they would regard it as deemed consent for conducting arbitration proceedings.

Sri J. Sivanesan, Learned Counsel for the applicant, would submit that no reply was received from the respondents to this letter.

When the application came up for admission, notice was issued to the respondent which was returned unserved. Fresh notice was ordered, which was also returned unserved and thereafter, on an application made by the applicant herein to effect service of notice through paper publication, permission was accorded by proceedings dated 31.03.2017. The applicant filed proof of publication on 22.12.2017.

The Purchase Order dated 21.08.2009 contains the arbitration clause which reads as under:

“If the parties fail to arrive at any amicable settlement within next 30 days then all such disputes or differences shall be referred to arbitration consisting of these arbitrators. Each party shall nominate one arbitrator within 45 days and the two arbitrators so nominated by both the parties shall appoint the third arbitrator within 30 days who shall be the presiding Arbitrator. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, or any other statutory modification or enactment thereof. The decision of the Arbitral Tribunal shall be final and binding upon the parties. The place of arbitration shall be at Hyderabad. The legal Court jurisdiction for settlement of the dispute shall be at Hyderabad Court only.
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In terms of the said Clause, each party is required to nominate one arbitrator, and the two arbitrators are required to appoint a third arbitrator. As the applicant has already appointed Justice Sri Devinder Gupta, retired Chief Justice of this Court, as their nominee arbitrator, I consider it appropriate to appoint Justice Sri C.V. Ramulu, H.No.2-2-18/31(A-23), Durgabai Deshmukh Colony, Bagh Amberpet, Hyderabad - 13, retired judge of this Court, as the arbitrator on behalf of the respondent. Both the arbitrators shall appoint the third arbitrator. The Learned Arbitrators shall ~~fix~~ their remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. The Arbitrators shall complete the arbitration proceedings and pass an award at the earliest, preferably within a period of six months from the date of commencement of the arbitral proceedings. Since the place of arbitration is at Hyderabad, they are 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 stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 23.02.2018

MRKR