

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

ARBITRATION APPLICATION No.77 of 2016

ORDER:

This is an Application for a measure under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. The document containing the conditions of contract and the agreement as between the parties is placed on record. Clause 35 of that document contains the arbitration clause. It reads as follows:-

“35. ARBITRATION CLAUSE:

Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of this Contract and success of the assignment. The parties shall use their best efforts to settle amicably all disputes arising in connection with this Agreement or its interpretation.

All disputes, differences, claim, question or controversy between the Parties arising out of or in relation to this Contract, or the material breach, termination or invalidity thereof, or as to the scope, effect, interpretation, validity or existence of any clause or terms thereof, or in any way relating to or in connection with the work, whether during the progress of work or after its completion (“Dispute”) which cannot be settled amicably within 120 days after receipt by one Party of the other Party’s request for such amicable settlement may be submitted by either party for settlement through arbitration to be conducted in accordance with the procedure of the Arbitration and Conciliation Act, 1996 of India as amended from time to time, through a Sole Arbitrator to be nominated by the Chairman & Managing Director of NACIL. It is expressly clarified that any person or persons so appointed by the Chairman & Managing Director of NACIL may, have been associated with or worked upon the Project and that this shall not be a ground for disqualification of such person as arbitrator. The arbitration proceedings shall be conducted in English at Hyderabad only. The arbitration award of the Sole Arbitrator will be final, conclusive and binding upon both parties. The cost of arbitration proceedings

shall be borne equally by both the Parties. Further the existence of any disputes or pendency of any arbitration or other proceedings will not entitle or enable Contractor to abandon or delay the work or in any manner withhold the services to be performed hereunder.”

3. Though on earlier occasion time was sought by the learned counsel for the respondents to file counter affidavit, no counter affidavit is filed. There is no dispute as to the existence of the arbitration agreement.

4. Under such circumstances, sole arbitrator is required to be appointed as it would be the requisite measure in terms of Section 11(6) of the Act.

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

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

No order as to costs. Miscellaneous applications, if any, pending in the Arbitration Application, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

27.07.2018
Pln/vs