

ARBITRATION APPLICATION No.30 of 2012

ORDER:

This is an application seeking appointment of an Arbitrator and for requisite measure in terms of Sub-sections (4) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, the A&C Act).

2. Heard the learned counsel for the parties in the light of the pleadings and other materials on record.

3. The applicant, which is stated to be a Partnership Firm engaged in the business of architectural consultancy, interior constructions and other allied businesses, entered into a transaction with the respondent – Centre for Development of Advance Computing, for carrying out works which are delineated in the documents on record between the parties. On the plea that there are disputes as between the parties and such disputes are to be resolved in terms of the General Conditions of Contract, the applicant has filed this application relying on Clause 33 of the General Conditions of Contract, which is part of the tender document.

4. The respondent does not refute the fact that the applicant was engaged to carry out certain works and certain works were, in fact, done as a result of such transaction. The plea raised by the respondent is that the agreement was not signed by the applicant and that the claims raised are barred by limitation.

5. The materials on record, including the pleadings, clearly show that there is an arbitration agreement as part of the contract between the parties under which works were done and for which certain arrangements were also made towards settlement and payment. The arbitrability of disputes is itself a matter for arbitration. The question whether certain claims are barred by limitation, going by the materials on record and the pleadings of the parties, is a mixed question of fact and law and is, therefore, to be preserved to be considered in arbitration rather than being adjudicated in this application under Section 11 of the A&C Act (See **Arasmeta Captive Power Company Private Limited v. Lafarge India Private Limited**¹).

6. The respondent, going by its counter affidavit, is a Scientific Society under the administrative control of the Ministry of Communications & Information Technology, Department of Electronics & Information Technology, Government of India, and is engaged in the research activities of national importance in various areas of Electronics & Information Technology. The material papers placed by the respondent on record show, among other things, that there were discussions between the parties regarding the period of completion of work and different other aspects, which would clearly show that the transaction between the parties was in the form of a concluded contract. The fact is that the tender document was submitted by the applicant and the General

¹ AIR 2014 SC 525

Conditions of Contract is part of such documents so submitted. Under such circumstances, the existence of an arbitration agreement is established in terms of the A&C Act. Even if a further document is not signed, going by the stand of the respondent, that is no ground to hold that there is no concluded arbitration agreement between the parties. Having been satisfied to that extent, all issues are to stand left open for adjudication in arbitration. This would include the sustainability of any other claims and any bar to grant of relief including issues relating to bar of limitation. Arbitrability of disputes would also stand open for consideration in the arbitration.

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

5. Accordingly, Sri M.Rajender, Retired District and Sessions Judge, 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. Miscellaneous applications, if any, pending in the Arbitration Application, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

14.09.2018

vs