

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

ARBITRATION APPLICATION No.18 OF 2013

ORDER:

This is an application under Sub-sections (5) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. The existence of an arbitration agreement between the parties is not in dispute. Clause 7 of the agreement dated 01.01.2012 deals with resolution of disputes. It contains an elaborate provision regarding the arbitration agreement between the parties. It reads as follows:

“7.1 If any claim, dispute or difference shall arise between the parties hereto as to the interpretation of this Agreement or any covenants or conditions hereof or as to the rights, duties, claims or liabilities of any Party hereunder or as to any act, matter or thing arising out of or relating to or under this Agreement (even though the Agreement may have been terminated), the same shall be referred to an Arbitrator to be appointed by mutual consent of both the parties hereto and the decision of the arbitrator shall be final and binding on the parties. Any such reference shall be subject to and governed by the provisions of Arbitration and Conciliation Act, 1996 and any statutory modifications/notifications thereof.

7.2 Pending the completion of any arbitration proceedings, payments not in dispute shall continue to be made, and obligations not in dispute shall continue to be performed, and in rendering any award, the Arbitrator shall make appropriate adjustments for any such payments as may be consistent with the award. The award passed by the Arbitrator shall be final and binding on the parties.

7.3 The venue of arbitration proceeding shall be Husnabad and the Courts at Husnabad shall have exclusive jurisdiction to entertain and adjudicate any dispute between the parties.

7.4 The language of Arbitration shall be English and the parties shall share the costs of the Arbitration equally.”

3. The existence of disputes between the parties is established by the pleadings on record. The respondent also pleaded that an application has been filed before the District Court. That is an application under Section 9 of the Act.

4. The existence of an arbitration clause coupled with availability of an arbitration agreement between the parties calls for the requisite measure in terms of the provisions of the Act. This application is entitled to be allowed.

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

6. Sri M. Rajender, retired District 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.

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

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 20th September, 2018

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