

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Arbitration Application No.101 of 2016

ORDER:

This application is filed, under Section 11(4) and (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

An annual maintenance contract agreement was entered into, between the applicant and respondents 1 and 2 on 19.11.2012. The said agreement records that, in case the applicant came to the conclusion that the 2nd respondent had failed to fulfill the terms of the annual maintenance contract, the 1st respondent should step into the shoes of the 2nd respondent on a written notice by the applicant, and both of them would be jointly and severally responsible for fulfilling the terms of the agreement. The said agreement provides for arbitration and stipulates that, in the event of any disputes, differences or claims arising between the parties in connection with the agreement, during its subsistence and/or after its termination in any manner whatsoever, including the validity or the construction or interpretation of any of the clauses thereof or anything done or omitted to be done pursuant thereto, the parties shall first endeavour to amicably settle such disputes, differences or claims, failing which the same shall be referred to and resolved through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996; the venue of arbitration shall be at Visakhapatnam; and the proceedings shall be conducted in English.

The applicant issued a notice to both respondents 1 and 2 on 24.09.2015 raising several monetary claims for a total sum of Rs.10,83,09,756/-. In reply thereto, the first respondent, by their

letter dated 05.11.2015, denied each and every allegation in the said legal notice and informed the applicant that they were under no liability or obligation whatsoever to comply with the terms of said legal notice. The applicant, in turn, issued a notice in reply thereto dated 18.12.2015 where they further stated that they had appointed Sri K.Surya Rao, their Director (Finance) to hold discussion with the first respondent on 04.01.2016 for amicable settlement of the issues mentioned under the notice, and the first respondent should appoint a suitable person to represent them in the discussion. Subsequently, by notice dated 20.02.2016, the applicant informed respondents 1 and 2 that, in terms of the arbitration clause, they were nominating two retired High Court Judges, and sought consent of the respondents to their appointment. Again, by notice dated 01.06.2016, both respondents 1 and 2 were informed of the nomination of three arbitrators, seeking their consent to any one of them. On the ground that no response was forthcoming, the applicant invoked the jurisdiction of this Court seeking appointment of an arbitrator.

Sri P.Vikram, Learned Counsel for the applicant, would submit that, in terms of the arbitration clause, attempts were made to resolve the disputes amicably, but to no avail; consequently, the applicant had perforce to invoke the arbitration clause, and request the respondents to give their consent to the appointment of any one of the arbitrators nominated by them; and, since no such consent was forthcoming, they had perforce to invoke the jurisdiction of this Court under Section 11(4) and (6) of the Arbitration and Conciliation act, 1996, seeking appointment of an arbitrator. Learned Counsel would submit that the only objection raised, on behalf of the first respondent, is that no attempts were made to mutually resolve the

disputes; and the lengthy correspondence between the parties would show that this allegation is without basis, as repeated attempts to resolve the inter-se disputes were not successful.

Despite service of notice, neither has any counsel entered appearance on behalf of the 2nd respondent nor is the 2nd respondent represented before this Court.

Smt.Sangeeta Bhaskar, Learned Counsel for the 1st respondent, would however contend that, while attempts were made to resolve the inter-se disputes and meetings were held between the applicant and the 1st respondent, the 2nd respondent did not participate in any such meetings; and since the arbitration clause requires disputes between all the three parties to be resolved by mutual discussion, failure on the part of the applicant, to mutually discuss and resolve the issue with the 2nd respondent, would disable them from invoking the arbitration clause.

I must express my inability to agree. The fact that there are disputes, between the parties, is evident. It is also not in dispute that the applicant sought to mutually resolve their disputes with the first respondent. The contention, urged on behalf of the first respondent, is that no attempts were made by the applicant to mutually discuss and resolve their disputes with the second respondent. No such grievance has been made by the 2nd respondent which has chosen not even to be represented before this Court through counsel, or to file their counter-affidavit. The legal notices sent by the applicant were also to the 2nd respondent; and, if the 2nd respondent chose not even to respond thereto, the applicant cannot be faulted or be held not to have made attempts to mutually discuss and resolve their disputes with the 2nd respondent. The objection

raised on behalf of the 1st respondent in this regard necessitates rejection.

As this is the only objection raised to the appointment of an arbitrator, I consider it appropriate to appoint Sri Justice P. Durga Prasad, (Retired Judge of this High Court), R/o.Flat Nos.103 & 104, Block No.5, Harivillu Apartments, Manikonda, Hyderabad – 500 089, (CellNo.94910 66591), as the sole arbitrator to resolve the disputes between the parties. The Learned arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. The Learned Arbitrator is requested to complete the arbitration proceedings, and pass an award at the earliest, preferably within a period of six months from the date of commencement of arbitral proceedings.

Both Sri P.Vikram, Learned Counsel for the applicant and Smt. Sangeeta Bhaskar, Learned Counsel for the 1st respondent, would request this Court to appoint an arbitrator with the venue of arbitration at Hyderabad. As the parties are in agreement regarding the venue of arbitration, I request the Learned Arbitrator to hold sittings, as far as possible, in the mediation centre of the High Court at Hyderabad.

The Arbitration Application is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

Date:25.01.2018.
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