

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Arbitration Application No.48 of 2016

ORDER:

This application is filed, under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole arbitrator. Clause 22 of the lease agreement dated 15.11.2003, entered into between the applicant and the respondent, provides for dispute resolution. Clause 22(a) stipulates that, in the event of disputes, best efforts shall be made to resolve them by mutual discussions in the manner provided; and in case no solution is found within 60 days of reference to the Committee, the dispute shall be referred to arbitration. Clause 22(b) provides that, in the event of the Committee not finding an acceptable solution to the dispute within 30 days of the reference of the dispute to it, the Committee shall submit the dispute to arbitration under the Arbitration and Conciliation Act, 1996. Clause 22(c) stipulates that appointment of a sole arbitrator for the purpose shall be as follows: (i) the lessor shall give a panel of three independent and impartial persons, from which the company (applicant-lessee) shall choose one; in the event the company (applicant-lessee) fails to notify its choice within 15 days, it shall be deemed to have waived the right to choose, and the lessor may appoint any one of them to be the sole arbitrator; and the fees of the arbitrator shall be fixed in advance and paid in equal shares by both the parties before commencement of the arbitration. (ii) The lessee shall be entitled to challenge the appointment of the arbitrator only if circumstances, that give rise to justifiable doubts as to his independence and impartiality, arise after the appointment; and in case of replacement of the arbitrator, the proceedings shall continue with the material already on record. Clause 22(c)(iii) stipulates that the place of arbitration shall be Hyderabad, and the language used shall be English. On the very same day, a construction

and management agreement, for development of food courts in N.T.R. Gardens, Hyderabad, was entered into between the applicant and the respondent. Clause 15.3 of the said agreement contains a similar arbitration clause.

The applicant, by its letter dated 04.02.2016, requested the respondent to appoint a committee to look into all facts and claims. As no response was forthcoming thereto, the applicant addressed letter dated 10.03.2016 proposing the name of an Advocate to be the representative of the lessee in the committee to solve the disputes amicably. As no reply was forthcoming even to this letter, the applicant, vide letter dated 22.03.2016, called upon the respondent to furnish a panel of three independent and impartial persons from whom the applicant could choose one to be the arbitrator. Since no reply was forthcoming even to this letter, the applicant has invoked the jurisdiction of this Court under Section 11 of the 1996 Act.

While Sri P.Rajender Reddy, Learned Counsel for the applicant, would submit that, in the light of the arbitration clause in the agreements, this Court may appoint a retired Judge of this Court as the sole arbitrator, Sri V.Narasimha Goud, Learned Standing Counsel for HMDA, would contend that the applicant's claim is untenable; it is devoid of merit, and deserves to be dismissed in limini; the applicant was solely responsible for the delay in taking possession of the subject land; and the respondent cannot be mulcted with liability in this regard.

It is not in dispute that there is an arbitration clause in both the lease agreement and in the construction and management agreement. Section 11(6A) of the Arbitration and Conciliation Act, 1996, inserted by Act 3 of 2016 with retrospective effect from 23.10.2015, stipulates that the High Court, while considering any application under sub-sections (4) or (5) or (6) of Section 11, shall, notwithstanding any judgment, decree or

order of any Court, confine to the examination of the existence of an arbitration agreement. In the light of this provision, the scope of enquiry, in an application filed under Section 11(4), (5) and (6), is restricted only to an examination whether there exists an arbitration clause, and nothing more. All other matters are to be left open for examination and resolution by the arbitrator, consequent upon his appointment.

As the existence of an arbitration clause is not in dispute, I consider it, appropriate, to appoint Sri Justice T.N.C. Rangarajan, Retired Judge of this Court, R/o.Vishnu's Blue Lotus, 103, 2nd Floor, 8-2-2/1/A/1, 2, 3, 4, Road No.3, Banjara Hills, Hyderabad – 34, as the sole arbitrator. The Learned Arbitrator shall fix his remuneration, and incidental charges for the arbitration proceedings, in consultation with the parties. He is requested to complete arbitration proceedings, and pass an award at the earliest, preferably within a period of six months from the date of commencement of arbitral proceedings. He is also requested to hold sittings, as far as possible, in the mediation centre of the High Court.

Suffice it to make it clear that it is open both to the applicant and the respondent to put forth their respective claims/counter-claims/defence before the Learned Arbitrator.

The 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:13.04.2018.
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