

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE R. SURESH KUMAR

O.P. No.114 of 2019

Shree Karthik Papers Limited
rep. By its Managing Director,
Mr.M.S.Velu
No.25, 50 Feet Road,
Krishnaswamy Nagar,
Ramanathapuram, Coimbatore - 641 045.

.. Petitioner

-VS-

OPG Power Generation Pvt. Ltd.,
No.6, Sardar Patel Road,
Guindy,
Chennai 600 032.

.. Respondent

Prayer: Petition filed under Section 11(4) of the Arbitration & Conciliation Act, 1996 to appoint a Sole Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996, to adjudicate all disputes between the petitioner and the respondent based on the Agreement dated 18.04.2018.

For Petitioner

: Mr.M.Krishnappan, Senior Counsel
for Ms.R.Swarnalatha

For Respondent

: Mr.Vinodkumar

ORDER

The prayer sought for herein is to appoint an Arbitrator to resolve the dispute between the petitioner and the respondent based on the

agreement dated 18.04.2018 entered into between the petitioner and the respondent.

2. Heard Mr.M.Krishnappan, learned Senior counsel appearing for the petitioner and Mr.Vinodkumar, learned counsel appearing for the respondent.

3. The petitioner and the respondent entered into an agreement called "Power Supply Agreement" on 18.04.2018 at Chennai. In the said agreement, under Clause 12 under the heading "Governing Law and Arbitration", all disputes and differences between the parties arising out or in connection with the agreement shall first be tried to be settled through mutual negotiation and in the event that, any dispute could not be resolved between the parties, pursuant to Clause 12.2, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 to a sole arbitrator to be appointed by the Generator.

4. In this regard, it is the case of the petitioner that, though the respondent is the Generator and he has got the right to appoint a sole arbitrator when a dispute arose between the parties and when the petitioner Consumer had written to the respondent on 25.12.2018 to appoint an Arbitrator, the respondent has not appointed any Arbitrator and in fact they have not even responded, therefore the petitioner moved the present

application invoking Section 11 of the Arbitration and Conciliation Act, seeking indulgence of this Court for appointment of Arbitrator.

5. I have heard Mr.Vinodhkumar, learned counsel appearing for the respondent, who would submit that, since there is a dispute with regard to the arbitral issue, the respondent has not responded to appoint an Arbitrator, even though there is a clause in the agreement to refer the matter, with regard to any dispute arise between the parties, to the Arbitrator.

6. Be that as it may, even the issue whether it is arbitral issue or not is a preliminary issue to be decided by the Arbitrator and the respondent has failed to appoint an Arbitrator in spite of the demand made in this regard by the petitioner, hence this Court is inclined to invoke Section 11 of the Arbitration and Conciliation Act, 1996 and accordingly, with the consent of both parties, appoint Mr.V.Karthic, Senior Advocate, having office at Old Shaw Wallace Building II Floor, 336, Thambu Chetty Street, Chennai - 600 001 (Mobile No. 94455 65067) as sole Arbitrator.

7. The issue raised herein by the parties shall be hence be referred to the sole Arbitrator so appointed, who shall on receipt of such reference shall enter into such reference and proceed in accordance with law. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally.

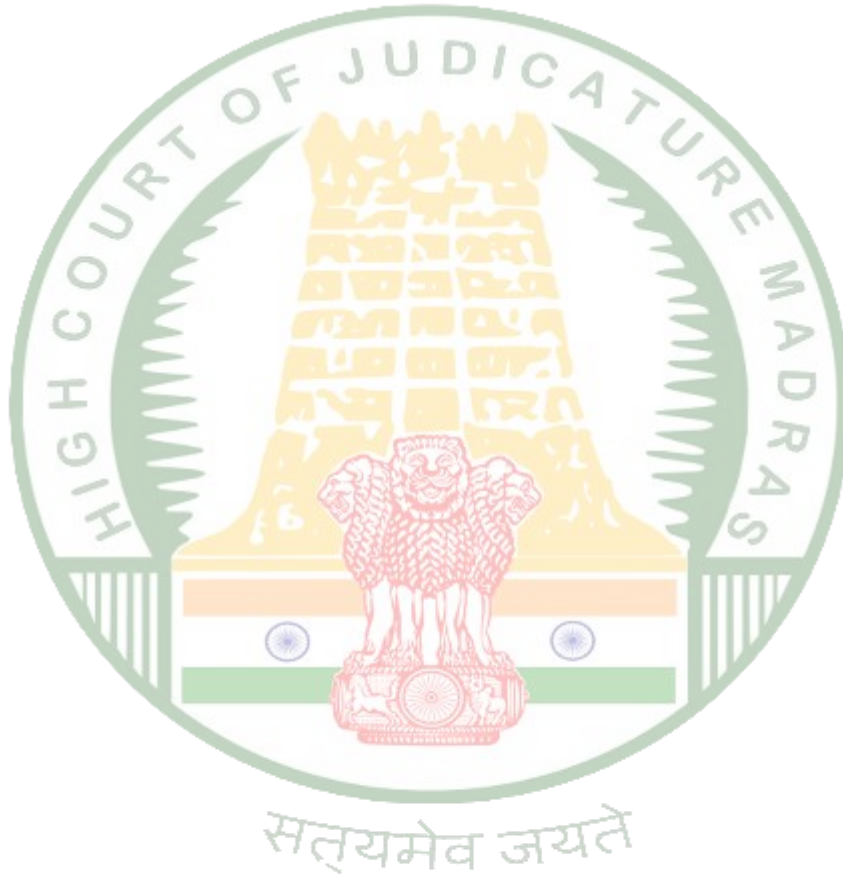
R. SURESH KUMAR, J.

tsvn

With these order of appointment of Arbitrator, this Original Petition is allowed.

tsvn

12.03.2019



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