

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.179 of 2019

M/s.UK Mecon Private Limited
rep. by its Director-Mr.Unnikrishnan Moochingal,
having registered office at
H.No.C-33, Sector-1, Shankar Nagar,
Raipur, Chhattisgarh-492 007.

administrative office at :
Su-wood, Nallur, Feroke,
Calicut, Kerala-673 631.

.. Petitioner

Vs.

M/s.FL Smidth Private Limited,
"FL Smidth House", 34, Egatoor,
Kelambakkam, Rajiv Gandhi Salai,
Chennai, Tamil Nadu-603 103.

.. Respondents

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole arbitrator to adjudicate the disputes between the petitioner and the respondent herein.

* * *

For Petitioner : Mr.Sankara Naryanan, Senior Counsel
for Ms.Harshini Jothiraman

For Respondent : Mr.T.Ravichandran
for M/s.Shree Law Services

ORDER

The petitioner has filed this Original Petition seeking for appointment of a sole arbitrator to adjudicate the disputes between the petitioner and the respondent herein.

2. The case of the petitioner, in a nutshell, is as follows :

2.1. The petitioner company is into the business of Engineering expertise catering to the needs of the heavy industries and mechanical project works with more than 35 years of experience. The respondent issued a letter of Intent dated 10.10.2012 favouring the petitioner for erecting coal handling plant at Jhabua Power Limited in Madhya Pradesh and also Purchase Order dated 27.12.2012 (PO) for erection of equipment. There were amendments to the POs, which modified the scope of the work. There was a sub-contract issued to the respondent's client M/s.Jhabua Power Limited (JPL).

2.2. The project was delayed owing to the reasons attributable to the respondent, which is evidenced by extension of time by the respondent, which also resulted in escalation of prices and loss to the petitioner.

2.3. The petitioner claimed that the respondent unilaterally issued a notice dated 01.04.2014 calling upon the petitioner to

suspend the work. Though the respondent permitted the petitioner to resume work, at its request, on 15.08.2014, again the work was suspended on 24.12.2014 without valid reasons. However, since the work reached penultimate stage, the petitioner completed the same and commissioned the plant. All these facts are within the knowledge of the respondent, but the respondent failed to pay various running bills, release the Bank Guarantee and also the additional expenditure incurred by the petitioner, which were claimed for additional works.

2.4. The petitioner sent a communication dated 04.02.2018 narrating all the breaches committed by the respondent, which was replied to on 17.12.2018 making vague denials, unwarranted allegations and casting aspersions on the petitioner and also claiming liquidated damages of Rs.45.05 lakhs without any basis.

2.5. Since the parties could not resolve the disputes, the respondent sent a legal notice invoking the arbitration clause, wherein, it appointed a retired Judge of this Court as its nominee Arbitrator. However, with a view to reduce the cost of the arbitration, the petitioner sought for appointment of a sole arbitrator, for which, it sought a panel from the respondent to choose one among them. But the respondent rejected the procedure suggested by the petitioner, however, accepted for the appointment of a sole arbitrator reiterating the name of the very same Arbitrator nominated by it.

2.6. While so, the learned nominee Arbitrator sent notice dated 28.12.2018 fixing the preliminary hearing on 19.01.2019. In the meanwhile, since the petitioner filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, it sought for deferring the hearing before the arbitral Tribunal pending disposal of this original petition. However, for deferring the matter, the learned Arbitrator sought for the production of the interim order of stay, if any, passed by this Court.

3. The respondent filed a counter-affidavit dated 25.06.2019 resisting the prayer stating that the petitioner failed to reply to the arbitration notice within the statutory period and as such, it lost the right to nominate its Arbitrator. Since the petitioner waived such right of nomination of the Arbitrator and sought for appointment of a sole Arbitrator, which was accepted by the respondent, the respondent wanted to go before the Arbitral Tribunal constituted by it. The respondent claimed that even now they are ready to go before a Arbitral Tribunal consisting of three Arbitrators.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

5. Admittedly, the facts are not in dispute. Though the Letter of Intent provides for constitution of three-members Arbitral Tribunal to resolve the disputes, by explicit communication the petitioner sought for appointment of a single Arbitrator and the same was accepted by the respondent. That being the position, the respondent cannot claim that the petitioner cannot seek a direction for appointment of a Sole Arbitrator in the place of three Arbitrators. Further, the respondent having accepted the request of the petitioner for sole Arbitrator, it could have furnished a panel of Arbitrators enabling the petitioner to choose one among them. Now it is not open to the respondent to go back and seek for appointment of a three-members Tribunal.

6. Having regard to the aforesaid undisputed facts and the submissions of the learned counsels on either side, Hon'ble Mr.Justice D.Hariparanthaman, a retired Judge of this Court, residing at No.2, First Main Road, Kamaraj Nagar, Thiruvannamiyur, Chennai-600 041, (Phone No.044-2441 6340) is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other

incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

7. The Original Petition is ordered accordingly. The parties shall bear their own costs.

26.11.2019

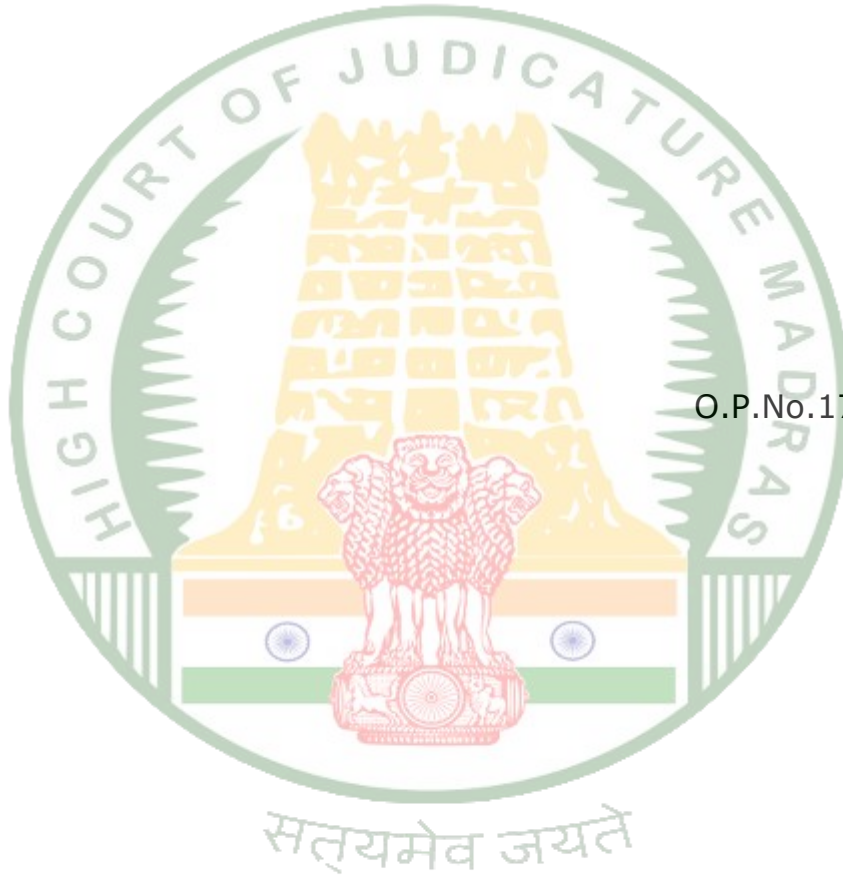
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