

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.493 of 2019

M/s.Zamil Steel Buildings India Pvt. Ltd.
rep. by its Authorised Signatory
Mrs.S.Shanti
Almonte Software Park, Office No.101,
First Floor, Plot No.2, S.No.8,
Kharadi, 411 014, Pune,
Maharashtra

also at
Kochar Technology Park,
Door No.SP-31A, 2nd Floor, 1st Cross Road,
Ambattur Industrial Estate,
Ambattur, Chennai-600 058. .. Petitioner

Vs.

M/s.Nilpeter India Private Limited
rep. by its Chairman & MD,
Plot No.P39/2, Central Avenue,
Mahindra World City, Anjur Village,
Kattankulathur Post, Chengalpattu Taluk,
Kancheepuram, Tamil Nadu-603 002. .. Respondent

* * *

Prayer : Petition filed under Section 11(6)(a) & (c) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate all the disputes between the petitioner and the respondent arising out of or in connection with the Purchase Order No.NPI/MWC/005/2016-17, dated 30.03.2017 and the Amended

Purchase Order NO.:NPI/MWC/005/2017-18-A1, dated 11.07.2017 issued to the petitioner by the respondent.

* * *

For Petitioner : Mr.Mrinal Beri

For Respondent : Mr.Karthik Sundaram

ORDER

The petitioner has instituted this Original Petition seeking for appointment of a Sole Arbitrator to adjudicate all the disputes with the respondent arising out of or in connection with the Purchase Order No.NPI/MWC/005/2016-17, dated 30.03.2017 and the Amended Purchase Order NO.:NPI/MWC/005/2017-18-A1, dated 11.07.2017.

2. The petitioner claimed to have been approached by the respondent for design, fabrication and supply of steel structural for its factory and held a preliminary meeting. On 24.03.2017, a revised Techno Commercial Offer was issued by the petitioner. Consequently, a Purchase Order dated 30.03.2017 (in short "PO") was issued for the total value of Rs.2,29,00,000/-, which includes excise duty and CST. The PO was subsequently amended on 11.07.2017 revising the amount to Rs.2,29,84,059/- to include GST. The petitioner furnished a Performance Bank Guarantee (BPG) for an amount of Rs.22,98,406/-,

which was valid till 10.05.2018 and was extended till 10.05.2019. The petitioner had been raising invoices periodically and maintaining the books of accounts properly. The petitioner complete the project, which was also acknowledged by the respondent. However, the respondent encashed the BPG on 11.12.2018 making a claim for an amount of Rs.16,51,648.74p. on the pretext that there is a non-fulfillment of contractual obligations. Though the petitioner requested the respondent to issue withdrawal letter to the Banker and asked for settlement of any issue, the respondent did not respond. Hence, the petitioner requested the respondent to pay the said amount of Rs.16,51,648.74p., which attempt of negotiation did not yield any positive result.

3. In the above circumstances, the petitioner through its Advocate sent a statutory notice dated 26.12.2018 under Section 21 of the Arbitration and Conciliation Act, 1996 (in short, "1996 Act") invoking arbitration Clause 9.5. of the Revised Techno commercial offer dated 24.03.2017 and nominated an Advocate as the Arbitrator. The respondent sent a reply dated 18.01.2019 stating that the invocation of the arbitration clause is unwarranted and premature, for which, a rejoinder was also sent by the petitioner on 30.01.2019. Thus, the petitioner filed this petition for the aforesaid relief.

4. By filing the counter-affidavit dated 31.07.2019, *inter alia*, denying the allegations, the respondent resisted the prayer of the petitioner and questioned the maintainability of this petition before this Court, as in terms of the arbitration clause 9.5. (i) the parties shall endeavour to resolve the dispute by mutual discussion and then only can invoke the said clause and (ii) the venue of arbitration is Pune, Maharashtra. It is the petitioner's conduct, which did not allow the respondent to attempt for resolving the disputes by discussions and also filing of this petition before this Court is not maintainable, the respondent sought for rejecting the relief prayed in the petition. It is also stated in the counter that due to the inordinate delay and lack of quality of workmanship and material, which were very well informed to the petitioner, the respondent had to spend additional costs, which only forced them to invoke the PBG. It is claimed by the respondent that the petitioner themselves admitted the liability in their letter dated 11.01.2018 and requested time to resolve the issue.

5. Heard the learned counsels on either side. Though the learned counsel for the respondent initially opposed the appointment of an Arbitrator, after some arguments, he is agreeable for appointment of a Senior Advocate of this Court to be the Arbitrator.

6. Considering the submissions of the learned counsels for the parties, Mr.S.Arunachalam, Advocate, having office at No.323, New Additional Law Chambers, High Court Buildings, Chennai-600 104, (Phone No.8056038856), 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.

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

Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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