

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.678 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 Work Order dated 30.03.2017 and the Amended Work Order dated 26.07.2017 issued to the petitioner by the respondent.

* * *

For Petitioner : Ms.P.Stella Mary

For Respondent : Ms.Deepika Murali

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 Work Order dated 30.03.2017 and the Amended Work Order dated 26.07.2017.

2. The petitioner claimed to have been approached by the respondent for erection 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 Work Order dated 30.03.2017 (in short 'WO') was issued for the total value of Rs.23,00,000/-, which includes excise duty and CST. The PO was subsequently amended on 26.07.2017 revising the amount to Rs.23,60,000/- to include the GST. The petitioner had been raising invoices periodically and maintaining the books of accounts properly. The petitioner completed the project, which was also acknowledged by the respondent. But the respondent did not clear the outstanding bill amount of Rs.2,32,000/- on the pretext that there is a non-fulfillment of contractual obligations. Hence, the petitioner requested the

respondent to pay the said amount, which attempt of negotiation did not yield any positive result.

3. In the above circumstances, the petitioner through its Advocate sent a notice dated 07.03.2019, which was replied to vide notice dated 14.03.2019 by the respondent raising false claims. Thus, invoking arbitration Clause 9.5. of the Revised Techno commercial offer dated 24.03.2017, the petitioner sent statutory notice dated 22.03.2019 under Section 21 of the Arbitration and Conciliation Act, 1996 and nominated an Advocate as the Arbitrator. The respondent sent a reply dated 16.04.2019 stating that the invocation of the arbitration clause is unwarranted and premature. Thus, the petitioner filed this petition for the aforesaid relief.

4. By filing the counter-affidavit dated 01.10.2019, 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 the inordinate delay and lack of quality of workmanship and material committed by the petitioner only forced the respondent to withheld the outstanding amount and sought for Leak Proof Warranty Certificate for 5 years and Structural Stability Certificate for 20 years, as agreed in the WO.

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 as has been done in O.P.No.493 of 2019 between the same parties.

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. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

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

14.10.2019

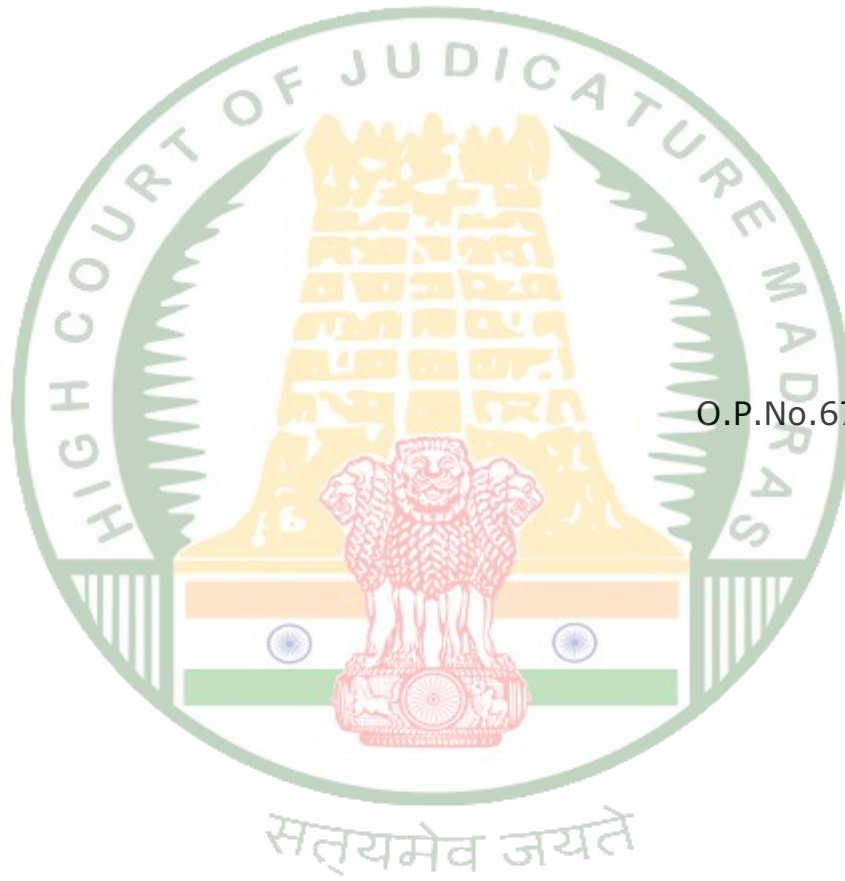
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PUSHPA SATHYANARAYANA, J.

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