

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.7 OF 2019

ORDER

By way of this application filed under Section 11(4) and (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), Ramky Infrastructure Limited, Hyderabad, seeks appointment of a Presiding Arbitrator in terms of Clause 20.6 of the General Conditions of Contract to resolve its claim for a sum of Rs.129,56,12,088/- raised against the Andhra Pradesh Road Development Corporation, Vijayawada, represented by its Managing Director-cum-Chief Engineer (R & B) CRN.

In the affidavit filed in support of the application, the authorised signatory of the applicant company stated that Contract Agreement bearing No.7/2012-13/CE (R&B) CRN & MD, APRDC dated 02.08.2012 was executed by and between the parties at Hyderabad in relation to the widening and strengthening of Pedana – Nuzuvid – Vissannapet Road from Km.7/0 to Km.58/920 in Krishna District, Andhra Pradesh. Disputes having arisen in relation to this contract, the parties went before the duly constituted Dispute Board but as both of them were dissatisfied with the decision/recommendation of the Dispute Board, they decided to commence arbitration. Letter dated 15.10.2018 of the respondent corporation and the letter dated 17.10.2018 of the applicant company stand witness to this fact.

The applicant company nominated Sri D.Sree Rama Murthy, Retired Chief Engineer (R & B), as an Arbitrator, *vide* its letter dated 10.12.2018, while the respondent corporation appointed Sri M.Krishna Murthy, Retired Chief Engineer (R & B), as its nominated Arbitrator, *vide* letter dated 26.10.2018. As the named Arbitrators failed to nominate an Umpire/Presiding Arbitrator, the applicant company is before this Court.

Notice having been ordered, Sri T.Ramulu, learned counsel, entered appearance for the respondent corporation.

The Managing Director of the respondent corporation filed a counter stating that he had no objection to the appointment of a Presiding Arbitrator by this Court. He also put-forth the names of three retired High Court Judges for this purpose.

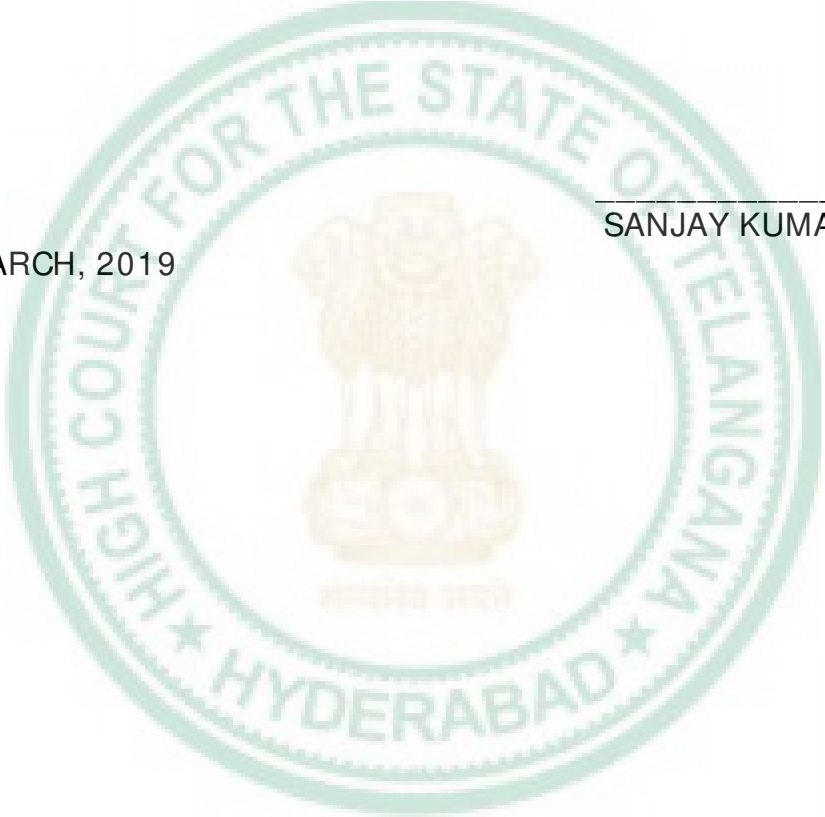
Clause 20.6 falling in Section VII of the Contract Agreement, dealing with the 'General Conditions', contains the arbitration agreement and it reads as under:

- 20.6 Arbitration Unless indicated otherwise in the Particular Conditions, any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:
- (a) ...
 - (b) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located,
 - (c) the arbitration shall be conducted in the language for communication defined in Sub-Clause 1.4 (Law and Language), and
 - (d) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The case on hand would fall within sub-clause (d) of the aforestated Clause 20.6. As both parties are at consensus with regard to the appointment of an Umpire and given the fact that the Arbitrators nominated by the parties are both technically qualified, this Court is of the opinion that it would be appropriate to appoint a Retired Judge of the Supreme Court as the Umpire, keeping in mind the quantum of the claim of the applicant company.

The Arbitration Application is accordingly ordered appointing Sri Justice P.Venkatarama Reddi, Retired Supreme Court Judge, residing at B-12, Stone Valley Apartments, Road No.4, Banjara Hills, Hyderabad, as the Umpire to preside over the arbitration proceedings in relation to the claim of the applicant company for a sum of Rs.129,56,12,088/- against the respondent corporation. The learned Umpire shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

27th MARCH, 2019
PGS

SANJAY KUMAR, J