

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.9 OF 2019

ORDER

By way of this application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), AKR Constructions Limited, Hyderabad, seeks appointment of a sole Arbitrator for resolution of its claim for a sum of Rs.7.34 crores raised against Kranthi Constructions, Hyderabad, a partnership firm, and Sew Infrastructure Limited, Hyderabad, the respondents herein.

As per the affidavit filed by the Managing Director of the applicant company, a Memorandum of Understanding (MoU) was executed on 13.11.2008 by and between the applicant company and the respondents, to form a consortium for procuring the work order relating to Dr.B.R.Ambedkar Pranahitha Chavella Sujala Srawanthi Package No.26. The consortium emerged the successful bidder for the work valued at Rs.1,042.20 crores. A fresh MoU was executed by the members of the consortium on 21.02.2009 superseding the earlier MoU dated 13.11.2008.

Disputes having arisen in relation to this MoU, the applicant company addressed notice dated 21.02.2018 to the first respondent firm marking a copy thereof to the second respondent company. Thereby, the applicant company called upon them to convene a meeting so as to share the amount received so far, as per the revised supplemental MoU, within fifteen days, failing which the applicant company stated that it would be constrained to take measures to approach for arbitration as well as other remedies to receive its eligible share of the amounts. According to the applicant company, despite receiving the aforestated notice, neither of the respondents chose to reply. Thereafter, the applicant company addressed notice dated 06.11.2018 to the first respondent firm referring to its earlier

letter dated 21.02.2018 and stating that as neither of the addressees had responded and there was no possibility of an amicable settlement, it was invoking Clause 6 of the supplemental MoU dated 21.02.2009 and called upon the addressees to give their concurrence to appoint one of the three retired District Judges chosen by it as the sole Arbitrator to resolve the disputes. Again, a copy of this letter was marked to the second respondent company. No response having been received even to this communication, the applicant company is before this Court.

Notice having been served upon both the respondents, neither of them chose to enter appearance before this Court.

Clause 6 of the revised Supplemental Memorandum of Understanding dated 21.02.2009 reads as under:

'In case of any dispute, controversy or claim arising out of or relating to this MOU or any breach thereof shall be amicably resolved by mutual negotiations, failing which the same shall be referred to the decision of the arbitrator appointed by the parties with their mutual consent whose decision shall be final and binding on the parties hereto. The provisions of arbitration and Conciliation Act, 1996 shall apply to the Arbitration Proceedings. The venue of Arbitration shall be Hyderabad. The language of Arbitration shall be English.'

Section 21 of the Act of 1996 provides that arbitral proceedings commence on the date on which a request for the dispute to be referred to arbitration is received by the respondent. As this event came to pass long after 23.10.2015, being the date on which amendments to the Act of 1996 by way of Act 3 of 2016 came into force, the amended provisions of the Act of 1996 would apply to the case on hand. Section 11(6A) of the Act of 1996, inserted therein with effect from 23.10.2015, provides that the High Court, while considering an application under Section 11(6) of the Act of 1996, shall confine itself to examination of the existence of an

arbitration agreement and no more. As the existence of an arbitration agreement in Clause 6 of the revised Supplemental Memorandum of Understanding dated 21.02.2009 is clear and unmistakable, that issue stands settled.

The Arbitration Application is accordingly ordered appointing Sri Justice M.N.Rao, Retired Chief Justice of the High Court of Himachal Pradesh, residing at Flat No.313, Prithvi Block, My Home Nawadweepa, Madhapur, Hyderabad, as the sole Arbitrator for resolution of the disputes between the applicant company and the respondents, arising out of the Supplemental Memorandum of Understanding dated 21.02.2009, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator 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