

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND NINETEEN**

**PRESENT
THE HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

ARBITRATION APPLICATION NO: 52 OF 2014

Between:

M/s. Schindler India Private Limited, A companies resgietred under Companies Act, 1956, and having its registered office at B-401, 402 Delphi, Hiranandani Business Park, Powai, Mumbai - 400 076 And its branch office at S.R.Arcade, 3rd Floor 1-2-73/2, 1-2-63 & 64, Parklane, Secunderabad - 500 003 Rep. by its authorised representative Mr. Arun Manikya, S/o. Manikya

...APPLICANT

AND

M/s. Pochiraju Industries Limited, having its office at Plot No.7, Phase II, Alexandria Knowledge Park, Geneome Valley, Kolthur, Shamirpet Mandal, Ranga Reddy District, Andhra Pradesh - 500 078 Rep. by its Managing Director

...RESPONDENT

Application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 read with Scheme of Appointment of Arbitrators 2006 praying that for the reasons stated in the affidavit filed therewith, the High Court may be pleased to appoint a Sole Arbitrator to adjudicate the claims and disputes between the Applicant Company and the Respondent Company, and ii) to award costs of application

This Application coming on for hearing, upon perusing the Application and affidavit filed in support thereof and upon hearing the arguments of Sri N.Praveen Reddy, Advocate for the Applicant and Sri J.Ch.Y.Narsimham, Advocate for the Respondent not being present.

The Court made the following: ORDER

ORDER

The case of the applicant - company is that it is involved in the business of manufacturing and sale of elevators and escalators, and it entered into an agreement with the respondent - company on 12.11.2010, for supply of elevators, and accordingly as per the agreement it supplied three elevators and raised bill for payment of Rs.32,60,000/- (Rupees thirty two lakhs, sixty thousand only), but the respondent paid only an amount of Rs.29,70,000/- (Rupees twenty nine lakhs, seventy thousand only), and failed to pay the balance amount. Therefore, it issued notices on 07.02.2013 and 07.02.2014, to pay the balance amount, but as there was no response, it issued notice on 04.04.2014, invoking the arbitration clause and for appointment of an arbitrator. In spite of receipt of the said notice dated 04.04.2014, as there was no response, applicant filed the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996, read with Scheme to Appointment of Arbitrators, 2006, seeking to appoint sole arbitrator to adjudicate the claims and disputes between the applicant - company and the respondent - company.

Though notice is served on the respondent, there is no representation on its behalf, and no counter affidavit is filed.

Learned counsel for the applicant reiterating the above averments, further submits that the respondent - company also issued notice dated 28.08.2019 for conduct of its 24th Annual General Meeting.

Clause 18 of the commercial terms and conditions of the agreement dated 12.11.2010 reads as follows:

"If any dispute, controversy or claim between the parties arises out of or in connection with the agreement, including the existence, breach, termination or validity thereof (dispute), the parties shall use all reasonable endeavors to negotiate with a view to resolve the dispute amicably. If a party gives the other party notice that a dispute has arisen (a Dispute Notice) and the parties are unable to resolve the dispute amicably within 15 days of

service of the Dispute Notice (or such longer period as the parties may mutually agree), then the Dispute shall be referred to arbitration.

Any dispute shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be one, mutually accepted by the parties. The seat of arbitration shall be Mumbai. The language of the arbitration shall be English. Jurisdiction for purpose of the Arbitration and Conciliation Act, 1996 shall be Mumbai."

The above clause in the agreement provides that if a dispute arises between the parties, the same shall be resolved amicably by negotiations, and if a party gives dispute notice to the other party, and if the parties are unable to resolve the dispute amicably, then the dispute shall be referred to arbitration.

In the present case, the applicant has issued notices on 07.02.2013 and 07.02.2014 to the respondent seeking for payment of balance amount, and the said notices are stated to have been served on the respondent. The applicant along with this arbitration application, filed photo copies of the acknowledgements. As there was no response in spite of receipt of notices, the applicant issued notice dated 04.04.2014, in terms of Clause 18 of the agreement for appointment of sole arbitrator to resolve the dispute for non-payment of the amount. In the said notice, the applicant sought to appoint Ms. Shruti Desai, Advocate, High Court of Mumbai, 1st floor, Yousuf Building, Near Flora Fountain, Fort Mumbai - 400 001, as the sole arbitrator, to resolve the dispute. As there was no response from the respondent in spite of receipt of said notice, the present application is filed.

As noted above, in the present application, though notice was served on the respondent, there is no representation, and no counter affidavit is filed denying the assertions made by the applicant.

In view of the same, and having regard to the facts and circumstances of the case, the present arbitration application is allowed and Sri Ashok Jayawant Patil, Advocate, Bombay High Court, is appointed as sole arbitrator to adjudicate the claims and disputes between the parties to the application.

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 shares.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

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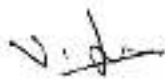
Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To

1. Sri Ashok Jayawant Patil, Advocate, Bombay High Court, Enrollment No.MAH/1333/1999, R/o.CALCOT HOUSE, 3rd Floor, 8/10, M P Shetty Marg, Mumbai-400001, Cell No.09820783872 Email: ashok j patil@hotmail.com
2. One cc to Sri N.Praveen Reddy, Advocate (OPUC)
3. One cc to Sri J.Ch.Y.Narasimham, Advocate (OPUC)
4. Two CD Copies

Kj.



HIGH COURT

DATED:31/12/2019



ORDER

ARBITRATION APPLICATION No.52 of 2014

ALLOWING THE A.A.

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