

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Arb.Appln.No.9 of 2018

O R D E R:

This Arbitration Application is filed under Section 11(5)&(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to decide the disputes between the applicant and the respondents arising out of the Development Agreement-cum-Irrevocable General Power of Attorney dt.24.05.2008.

2. Clause (27) of the said Agreement states as under:

“All the disputes and questions in connection with the proposed development transaction under this Development Agreement-cum-General Power of Attorney or its interpretation or any matter arising out or related to this Development Agreement cum General Power of Attorney, its implementation and all aspects thereof arising between the parties or between one of them and the legal representative of the other or others shall be referable to the arbitrator by nomination of one person from the Developer and another person from the Landowners, and such person nominated shall have the knowledge in legal matters, and construction of the building works and their award/decision shall binding on both Developers and landowners.”

3. The applicant had issued a notice dt.10.10.2017 for appointment of an Arbitrator by the respondents in terms of

the said clause, while appointing Sri S.Sridhar, Advocate, as its own arbitrator.

4. There is no reply given to the said notice by the respondents.

5. However, it is not in dispute that the 1st respondent had instituted O.S.No.260 of 2015 before the X Additional Chief Judge, City Civil court, Hyderabad to declare that the above Development Agreement-cum-Irrevocable General Power of Attorney dt.24.05.2008 is not enforceable and for a permanent injunction in favour of the 1st respondent.

6. In the said suit, the applicant herein had filed I.A.No.1418 of 2016 invoking Section 8 of the Arbitration and Conciliation Act, 1996 to refer the dispute to the arbitration and the said application is pending.

7. The applicant in the meantime filed O.P.No.2107 of 2007 before the Chief Judge, City Civil Court, Hyderabad invoking Section 9 of the Arbitration and Conciliation Act, 1996.

8. It is the contention of the respondents that in view of the pendency of the above proceedings, petitioner cannot

maintain the present application and must wait for the outcome of the said petition.

9. This contention is without any merit because remedies under Sections 8, 9 and 11 of the Act are independent and mere fact that a party has availed remedies under Section 8 & 9 does not preclude the said party from filing application under Section 11, like the instant one.

10. The other contention raised by the respondents is that they had filed a suit for cancellation of the Development Agreement-cum-Irrevocable General Power of Attorney dt.24.05.2008 containing the arbitration clause and therefore the said agreement itself cannot be enforced.

11. Admittedly, the suit O.S.No.260 of 2015 filed by the 1st respondent challenging the Arbitration Agreement is still pending and no relief has been granted as of date therein. Therefore, it cannot be said that the agreement containing the arbitration clause is not in force and the said clause cannot be enforced.

12. In fact, under Section 16(1)(a) of the Act, arbitration clause which forms part of a contract shall be treated as an agreement independent of other terms of the contract. Therefore, even if the other terms of the agreement between

the parties are not enforceable for whatever reason, the arbitration clause, being an independent agreement, would still be valid.

13. Counsel for the respondents also raised a plea that the claim of the applicant is barred by limitation. However, in view of the Sub-Section (6)(a) of Section (11) of the Act, this Court cannot go into the said issue and can only go into the question as to the existence of arbitration agreement.

14. I therefore do not find any valid objections to reject this application.

15. Though, under Clause 27 of the Agreement between the parties, two arbitrators are to be appointed, under Section 10(1) of the Act the number of arbitrators shall not be an even number.

16. In **M.M.T.C. Ltd v. Sterlite Industries (India) Ltd.**,¹ the Supreme Court held that any agreement specifying an even number of arbitrators cannot be a ground to render arbitration agreement invalid under Arbitration and Conciliation Act, 1996.

17. Therefore, I hereby appoint Hon'ble Sri Justice N.Ravi Shankar, Former Judge of the A.P. High Court to be the Sole

¹ AIR 1997 SC 605

Arbitrator to decide the disputes between the applicant and respondents arising out or in relation to the Development Agreement-cum-Irrevocable General Power of Attorney dt.24.05.2008.

18. Accordingly, this Arbitration Application is ordered. No order as to costs.

19. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

30th April, 2019.

Note: Copy to be marked to
Hon'ble Sri Justice N.Ravi Shankar(Retired),
H.No.1-96/1, Prabath Nagar, Chaitanyapuri,
Near Ganga Hospital,
Hyderabad-60.

B/o
gra