

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION No.8 of 2017

ORDER

By way of this application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), M/s.Isgec Heavy Engineering Limited (formerly known as Isgec John Thompson), a unit of the Saraswati Industrial Syndicate Limited, Yamuna Nagar, Haryana, seeks appointment of an Arbitrator to adjudicate its disputes with M/s.Hema Sri Power Projects Limited, Suryapet, Telangana, in relation to Supply Contract dated 11.12.2009 and Work Order dated 24.08.2010.

M/s.Isgec Heavy Engineering Limited, the applicant company, has various proprietary units, one of which is M/s.Isgec John Thompson. M/s.Hema Sri Power Projects Limited, the respondent company, entered into two contracts with M/s.Isec John Thompson, the unit of the applicant company. Supply Contract dated 11.12.2009 was executed by and between them for designing, engineering, manufacturing, procuring, testing and supplying machinery and equipment for a Traveling Grate Boiler along with its auxiliaries. Work Order dated 24.08.2010 was executed by and between them for erection and commissioning of the said machinery and equipment at the 12.6 MW power plant of the respondent company at Vibhalapuram Village, Mothey Mandal, Nalgonda District in Telangana. A dispute having arisen between the parties with regard to the alleged delayed payments on the part of the respondent company, a meeting was held on site on 19.04.2011 between them. Minutes of the Meeting dated 19.04.2011 were recorded and as per Clause 5 thereof, the respondent company was to release the outstanding dues of Rs.261.00 lakhs within 30 days. Other terms were also agreed to

by and between the parties in novation of their existing contract. Alleging that the respondent company failed to make the payments as promised, the applicant company addressed letter dated 17.05.2013 calling upon the respondent company to pay its total outstanding dues of Rs.1,83,17,724/- with interest @ 24% per annum within 15 days, failing which it stated that it would be constrained to initiate appropriate legal proceedings, including but not limited to invoking the arbitration clause in their agreements. Further correspondence and meetings having taken place between the parties, certain payments were made by the respondent company. However, according to the applicant company, a sum of Rs.7,07,406/- remained due and payable by the respondent company in relation to the Supply Contract dated 11.12.2009 and a sum of Rs.20,95,867/- was due under the Work Order dated 24.08.2010. In addition thereto, the applicant company claimed that a sum of Rs.40,81,758/- was due for supply of refractory items, in all aggregating to Rs.68,90,257/-. As per the applicant company, the respondent company is liable to pay interest thereon @ 24% per annum. Finally, the applicant company issued arbitration notice dated 13.07.2016, quantifying its claim at Rs.77,57,620/- with interest thereon @ 24% per annum while drawing the attention of the respondent company to Clause 22 of the Supply Contract dated 11.12.2009 and Clause 19 of the Work Order dated 24.08.2010 and informing the respondent company that it proposed to nominate Sri R.C.Chopra, retired Delhi High Court Judge, residing at New Delhi, as its Arbitrator. The applicant company called upon the respondent company to either give its consent or nominate an Arbitrator of its choice. According to the applicant company, the respondent company failed to reply to the aforesaid arbitration notice. It is in these circumstances that it filed the subject application.

Notice was ordered upon this Arbitration Application on 26.10.2018 and Sri V.S.R.Ravinuthala, learned counsel, entered appearance for the respondent company on 15.11.2018. However, no counter was filed contesting this application but existence of the arbitration agreement is not disputed by Sri V.S.R.Ravinuthala, learned counsel.

Clause 22 of the Supply Contract dated 11.12.2009 reads as under:

'22.0 ARBITRATION

22.1 If at any time, any question, dispute or difference whatsoever, shall arise between the SUPPLIER and the PURCHASER in relation to or in connection with or arising out of this Contract, both parties agree to resolve the same by mutual consultation. Failing resolution by mutual consultation, either party may give to the other a notice in writing of the existence of such question(s) / dispute(s) / difference(s) and the same shall be referred to the arbitration of a single Arbitrator, if agreed upon, otherwise to three Arbitrators, one each to be appointed by the PURCHASER and the SUPPLIER and the third shall be appointed mutually by the two Arbitrators appointed by the parties. The third Arbitrator shall act as the Presiding Arbitrator. The award of the said single Arbitrator or the three Arbitrators, as the case may be, shall be final and binding on both the parties. The arbitration proceedings shall be governed by the provisions of The Arbitration and Conciliation Act, 1996 and the rules framed there under and read with all statutory amendments and modifications thereof.

22.2 The place of arbitration shall be at Hyderabad, Andhra Pradesh. The arbitration language shall be English. The Contract shall be governed under Indian laws.

22.3 Applicable Courts at Hyderabad, Andhra Pradesh alone shall have jurisdiction.'

On similar lines, Clause 19 of the Work Order dated 24.08.2010 reads as under:

'19.0 ARBITRATION

19.1 If at any time, any question, dispute or difference whatsoever shall arise between you and ourselves in relation to or in connection with or arising out of this order, both you

and ourselves shall resolve the same by mutual consultation. Failing resolution by mutual consultation, either you or ourselves may give to the other a notice in writing of the existence of such question(s) / dispute(s) / difference(s) and the same shall be referred to the arbitration of a single Arbitrator, if agreed upon, otherwise of three Arbitrators, one each to be appointed by you and us, and the third shall be appointed mutually by the two Arbitrators. The award of the said single Arbitrator or the three Arbitrators, as the case may be, shall be final and binding on both the parties. The arbitration proceeding shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and the Rules framed there under and read with all statutory amendments and modifications thereof as are in force at the time of reference of dispute.

19.2 The Place of Arbitration shall be Hyderabad, Andhra Pradesh. The arbitration language shall be English. The Work order shall be governed under Indian Laws.'

In terms of Section 11(6A) of the Act of 1996, as amended by Act 3 of 2016 with effect from 23.10.2015, the Court dealing with an application under Section 11 of the Act of 1996 is to confine itself only to examination of the existence of an arbitration agreement and no more.

In the case on hand, as existence of the arbitration agreement is clear, manifest and undisputed, the applicant company would be entitled to seek appointment of an Arbitrator for resolution of its disputes with the respondent company. As the place of arbitration is Hyderabad, it would be convenient for the parties to have an Arbitrator located at Hyderabad.

The Arbitration Application is accordingly ordered appointing Sri C.Venkatesh, retired District Judge, residing at Flat No. 403, Sri Chandra Residency, New Dayanand Nagar, Judges Colony, Malakpet, Hyderabad, as the sole Arbitrator for resolution of the claim for Rs.77,57,620/- raised by the applicant company against the respondent company 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.

SANJAY KUMAR, J

19th FEBRUARY, 2019

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