

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Arbitration Application No.39 of 2018

ORDER:

This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the applicant seeking appointment of the Presiding Arbitrator as per the Share Subscription Agreement dt.24.04.2007 and Shares Holders Agreement dt.24.04.2007 to adjudicate the disputes, which have arisen between the applicant and the respondents.

2. It is the case of the applicant that Clause 13.17 of the Share Subscription Agreement dt.24.04.2007 and Clause 12.17 contemplate an Arbitral Tribunal consisting of 3 Arbitrators; that the applicant had nominated Sri Justice V.Suri Appa Rao, former Judge of the A.P. High Court, as an Arbitrator, while the respondents had appointed Sri Justice P.Ramakrishnam Raju, (retired Judge) as their Arbitrator; but both of them could not agree on the name of the Presiding Arbitrator.

3. It is contended that since there was no consensus among the appointed Arbitrators regarding the third Arbitrator, who shall be the Presiding Arbitrator, this application has been filed.

4. Counsel for the respondents contended that though the respondents had appointed Sri Justice P.Ramakrishnam Raju, as an Arbitrator in the Arbitral Tribunal, it is their contention that the applicant in this application is not a party to the said agreement and

cannot invoke the Arbitration clause. This is refuted by the counsel for the applicant.

5. However, since this issue can be raised under Section 16 of the Arbitration and Conciliation Act, 1996 before the Arbitral Tribunal, I do not propose to deal with the said issue and leave it open to both the parties to raise the said contention and all other contentions before the Arbitral Tribunal.

6. However, since there is no consensus among the appointed Arbitrators regarding the 3rd Arbitrator/Presiding Arbitrator, I deem it appropriate to appoint Hon'ble Sri Justice J.Chelameswar, former Judge, Supreme Court of India as the 3rd Arbitrator/Presiding Arbitrator along with Sri Justice V.Suri Appa Rao (retired Judge of A.P. High Court) and Sri Justice P.Ramakrishnam Raju (retired Judge of A.P. High Court), to adjudicate the disputes between the applicant and the respondents arising under or in relation to the Share Subscription Agreement dt.24.04.2007 and Share Holders Agreement dt.24.04.2007.

7. This application is accordingly disposed of.

8. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22.04.2019
LSK