

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.62 OF 2017

ORDER

SDM Projects Private Limited, Bengaluru, the applicant company, seeks appointment of a sole Arbitrator to resolve its claim for a sum of Rs.15,35,86,000/- raised against Terra Infra Development Limited, Nagpur, the respondent company. Work Agreement dated 12.04.2012 was executed by and between the applicant company and the respondent company in relation to the six laning of National Highway 47 from Vadakkancherry to Thirusur (KM 236.135 to KM 246.900) and construction of roadways, culverts, underpasses, minor bridges and a toll plaza. Disputes having arisen between them in relation to this work, the applicant company addressed legal notice dated 23.03.2017 to the respondent company invoking the arbitration agreement in Clause 29 of the Work Agreement dated 12.04.2012. The respondent company, in turn, got issued reply legal notice dated 12.04.2017 to the applicant company stating that there was no dispute inasmuch as the entire claim of the applicant company was vague, baseless, illegal and liable for rejection and as such, there was no occasion for invocation of the arbitration agreement. It is in these circumstances that the applicant company approached this Court.

Clause 29 of the Work Agreement dated 12.04.2012 reads as under:

- '29. In case of disputes or differences arising between the Parties relating to any matter arising out of or connected with this Agreement, such disputes or differences shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall consist of Sole Arbitrator to be nominated by mutual consent of the Parties. However, if such consensus could not be reached then the Sole

Arbitrator shall be nominated by the High Court of Andhra Pradesh. The Arbitral Award passed by the Arbitral Tribunal shall be final and binding on the Parties. The Venue of Arbitration shall be Hyderabad.'

As the venue of arbitration, as agreed upon by and between the parties, is Hyderabad, this Court would have jurisdiction to entertain this application for appointment of an Arbitrator.

Notice having been ordered on this application on 14.07.2017, Sri Mayur Mundra, learned counsel, entered appearance for the respondent company and filed a counter. Therein, the respondent company, while admitting execution of the Work Agreement dated 12.04.2012, asserted that the claim of the applicant company was without merit and was premature.

However it would not be within the domain of this Court to ascertain the merits of the dispute or as to whether it is arbitrable. Once the existence of the arbitration agreement between the parties is admitted, this Court would be justified in acting upon the same. Be it noted that as per Section 11(6A) of the Act of 1996, which was inserted therein by Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering an application under Section 11(5) & (6) of the Act of 1996 shall confine itself to examination of the existence of an arbitration agreement and no more.

In that view of the matter, the applicant company is entitled to appointment of an Arbitrator for resolving its claim against the respondent company.

The Arbitration Application is accordingly ordered appointing Sri Justice Nisar Ahmad Kakru, Former Chief Justice, erstwhile High Court of Andhra Pradesh, residing at X-19, Hauz khas Enclave, 2nd Floor, New Delhi-110016, as the sole Arbitrator for resolution of the disputes between

the applicant company and the respondent company, arising out of the Work Agreement dated 12.04.2012, 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

20th FEBRUARY, 2019

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