

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION No. 29 OF 2014

ORDER :

By way of this application the applicant seeks appointment of an Arbitrator in accordance with Section 11(5) & (6) and Section 11(8) (b) of the Arbitration and Conciliation Act, 1996 (*for short 'the Act'*) read with para 3(i)(d) of Scheme for resolution of disputes arising out of a Sub-contract agreement dated 02.01.2006 entered into between the Applicant Company and the Respondent Company.

It is the case of the applicant that applicant company and respondent company entered into sub-contract agreement dt.02.01.2006 for execution of certain works which were awarded to the respondent by the Government. During the course of execution of the said works, certain disputes arose between the parties, as such, there is exchange of notices and ultimately the applicant issued notice dt.10.05.2013 to the respondent, once again, demanding the respondent to pay the amounts, failing which they would invoke arbitration clause in the agreement. In response to the same the respondent has issued telegraphic notice on 27.05.2013 not agreeing for appointment of arbitrator, stating that reply would be given in due course. Thereafter, no reply was given by the respondent company. Aggrieved by the same, the applicant filed the present application.

Though counter is filed disputing several claims made by the petitioner, ultimately, at paragraph 15 it is stated as follows;

“..I submit that the Applicant has mis-represented to you claiming huge amounts as losses. The claim of huge amounts as losses are all false, arbitrary, baseless and fabricated only ill intention of taking undue advantage. The actual cost of material used on the work of course not the one boosted and shown the Applicant is however accounted for and adjusted in the amount due to the Respondent by the Applicant. Even though all the claims made by the Applicant are frivolous, the respondent has no objection to the reference of this dispute for arbitration by the Sole Arbitrator to be appointed by this Hon’ble Court.”

For appointment of Arbitrator under Section 11 of the Act, the only aspect that has to be taken into consideration is that whether there is any arbitration clause exists in the agreement or not. Clause-20 of the sub-contract agreement dt.02.01.2006 reads as follows;

“20. Except where otherwise provided in this Sub-contract agreement, all questions and disputes arising out of or relating to the sub-contract shall be referred to a sole arbitrator mutually agreed upon at the time of dispute, subject to the provisions of the Arbitration and Conciliation Act and any statutory modifications or re-enactment thereon. The rules made under the act and for the time being in force shall apply to the arbitration proceedings.”

A plain reading of Clause-20 of the agreement goes to show that the same provides for arbitration clause. Though respondent issued telegraphic notice in response to the legal notice dated 10.05.2013 of applicant, objecting for appointment of arbitrator, it is stated that no detailed reply was given to the said notice. More so, in the counter affidavit, the respondent did not seriously object for appointment of arbitrator.

In view of the facts and circumstances of the case, the arbitration application is allowed appointing Hon'ble Sri Justice B.Sudershan Reddy, Former Judge of Supreme Court, as the sole Arbitrator for resolution of dispute(s) between the applicant and respondent, arising out of Sub-contract agreement dated 02-01-2006 in accordance with the provisions and mandate of the Act of 1996.

A.RAJASHEKER REDDY, J

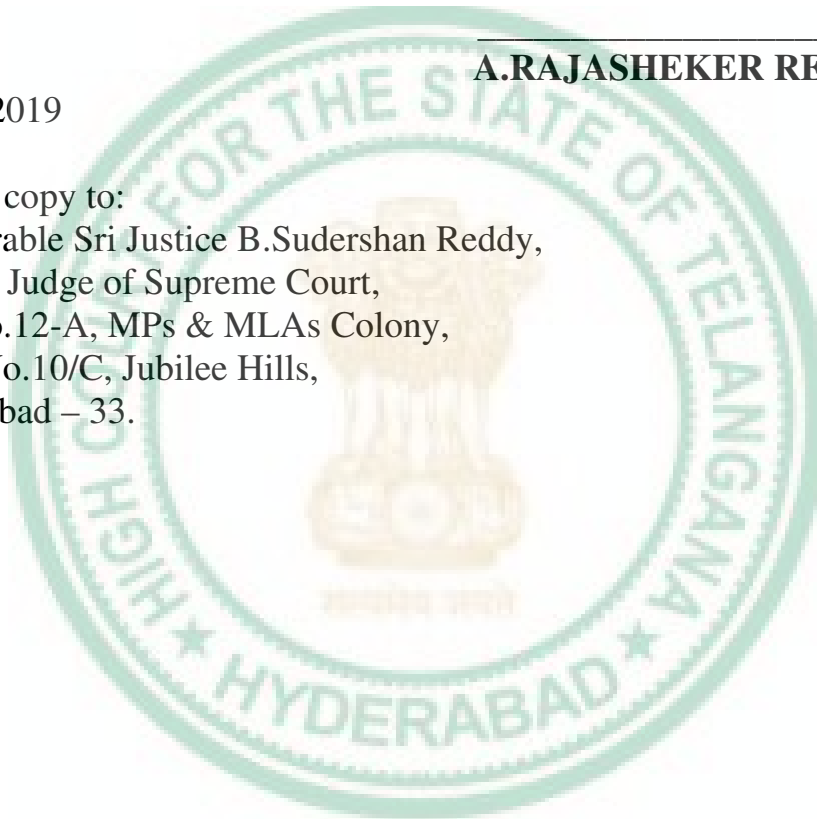
25-11-2019

Note:

Mark a copy to:

Honourable Sri Justice B.Sudershan Reddy,
Former Judge of Supreme Court,
Plot No.12-A, MPs & MLAs Colony,
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Hyderabad – 33.

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