

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION No. 27 OF 2019

ORDER :

This application is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (*for short 'the Act'*) seeking Appointment of Arbitrator to resolve the disputes between the Applicant and the Respondent arising out of the Purchase Agreement dt.24.02.2014 entered into between the Applicant and the Respondent.

The case of the applicant is that the applicant issued notice dt.18.05.2015 invoking arbitration clause as per Clause 17 of the Memorandum of Understanding entered into between him and respondent. As there was no response for the said notice from the respondent, present applicant is filed.

Learned Counsel for the applicant submits that the notice dt.18.05.2015 is the notice invoking arbitration clause in the Memorandum of Understanding.

Learned Counsel for the respondent submits that the said notice does not indicate that the applicant has invoked arbitration clause and it is only notice demanding certain amounts. He also submits that issuance of notice by invoking arbitration clause is mandatory before referring the dispute for arbitration, but, the same is lacking in this case, as such, there is no cause of action arose for the petitioner to file this application.

Learned Counsel for the applicant could not point out any other notice issued by the applicant nor the same is reflected in the application.

In case of *Alupro Building Systems Private Limited v. Ozone Overseas Private Limited (2017 SCC OnLine Del 7228)* the High Court of Delhi at para 30 held as follows;

“30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.”

In view of the above, I do not see any merit in the application and accordingly this application is dismissed. However, this will not preclude the applicant from invoking arbitration clause, in accordance with law.

A.RAJASHEKER REDDY, J

04-12-2019
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Arbitration Application No. 27 of 2016

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