

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.179 OF 2014

ORDER

M/s.Surasani Constructions Pvt. Ltd., Hyderabad, seeks appointment of a sole Arbitrator under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), for resolution of its claim for a sum of Rs.48,45,622.27 ps. raised against M/s.Tracks & Towers Infratech (P) Limited, Hyderabad. The applicant company and the respondent company entered into a Works Contract on 06.11.2013 in relation to earth work cutting, filling, compaction and supply of sand for the new BG railway line on the Khurda Road Division of East Coast Railway in the State of Orissa. Disputes having arisen between the parties in relation to this Works Contract, the applicant company addressed legal notice dated 28.10.2014 invoking the arbitration agreement in Clause No.35 of the Works Contract dated 06.11.2013 and calling upon the respondent company to suggest an Arbitrator who would be mutually acceptable to both parties. Despite service of this legal notice, the respondent company did not reply. It is in these circumstances that the applicant company filed the subject application seeking appointment of a sole Arbitrator.

Notice having been served, Sri J.Ashvini Kumar, learned counsel, entered appearance for the respondent company. He however did not file a counter contesting the application and expressed willingness on the part of his clients to submit to arbitration for resolution of the disputes between the parties in relation to the Works Contract dated 06.11.2013.

In terms of Section 11(5) & (6) of the Act of 1996, as amended by Act 3 of 2016 with effect from 23.10.2015, in an arbitration with a sole Arbitrator, if the parties fail to agree on the arbitrator within thirty days of

receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the High Court or any person or institution designated by such Court. As this Court is given the provision to deal with applications under Section 11 of the Act of 1996 by the Hon'ble The Chief Justice, High Court of Telangana, it would be within its power to undertake the exercise contemplated by Section 11(5) & (6) of the Act of 1996. 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.

Clause 35 of the Works Contract dated 06.11.2013 reads as under:

'35. All disputes relating to the agreement will be settled amicably by mutual discussion and in case of subsisting differences the same will be decided by an solo arbitrator appointed by TTipl in accordance with the provisions of the Indian arbitration and conciliation act 1996. M/s. Surasani Constructions Pvt Ltd accepts and both the parties are binding such arbitrators orders. Arbitration shall be conducted in English language and the place of arbitration shall be Hyderabad only.'

As the above clause clearly manifests the arbitration agreement existing between the parties and as they are also ready and willing to act upon it, this arbitration application is ordered appointing Smt. Ch.Shanta Kumari, Retired District Judge, residing at Flat No.409, 'A' Block, Surya Towers, Izzatnagar, Near Hitex, Opposite NVK Tennis Academy, Serilingampally, Hyderabad-500084, as the sole Arbitrator for resolution of the disputes between the applicant company and the respondent company, arising out of the Works Contract dated 06.11.2013, 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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