

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.122 OF 2018

ORDER

The applicants seek appointment of a sole Arbitrator under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve their claim for a sum of Rs.1,00,00,000/- raised against the respondent company.

The applicants and the respondent company entered into Memorandum of Understanding (MoU) dated 25.06.2014 for development of the agricultural land admeasuring Ac.36.33 guntas in Survey Nos.260, 261, 262 and 267 of Cheryal Village, Kandi Mandal, Sanga Reddy District, belonging to the respondent company. Disputes having arisen between them in relation to the MoU dated 25.06.2014, the applicants addressed legal notice dated 05.09.2018 to the respondent company invoking the arbitration agreement contained in Clause No.12 of the said MoU and calling upon the respondent company to nominate an Arbitrator. Despite receipt of the aforestated legal notice, the respondent company did not choose to reply. It is in these circumstances that the applicants filed the subject application, quantifying their claim against the respondent company at Rs.1,00,00,000/- and seeking appointment of an Arbitrator.

Notice was ordered on this application on 23.11.2018. Personal service having been permitted, Sri Tarun G.Reddy, learned counsel for the applicants, effected service of notice upon the respondent company, but it did not choose to enter appearance before this Court.

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 for the State 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 12 of the MoU dated 25.06.2014 reads as under:

'12. This MOU shall be governed by Indian law and the courts of Hyderabad shall have the exclusive jurisdiction to try and adjudicate on all matters relating to this Agreement. Parties agree that in the event of any disagreements, differences, disputes or deadlock, parties shall endeavour to resolve the same through mutual discussions and if the discussions fail they shall refer the matter to an arbitrator to be appointed by the Hon'ble high Court of Telangana through arbitration.'

In the light of the clear arbitration agreement existing between the parties and as the respondent company did not even choose to appear before this Court, the applicants are entitled to have their dispute resolved through arbitration.

The arbitration application is accordingly ordered appointing Sri Justice A.Gopal Reddy, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at Plot No.511, Phase III, Road No.86, Jubilee Hills, Hyderabad-500033, as the sole Arbitrator for resolution of the dispute(s) between the applicants and the respondent company, arising out of the MoU dated 25.06.2014, 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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