

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Arbitration Application No.125 of 2017

ORDER :

This Arbitration Application is filed under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 for constitution of an Arbitral Tribunal for appointment of a Sole Arbitrator to resolve the disputes arising out of and in connection with Work Order No.01(ONE), dt.24.12.2010 between the applicant and respondents.

2. The applicant herein invoked Clause (70) which is the Arbitration Clause vide letter dt.10.02.2014, addressed to the 2nd respondent.

3. In the said letter, the applicant also mentioned the claims which he is making against the respondents.

4. The 2nd respondent did not admit any of the claims, and refused to accede to the request of applicant to appoint an arbitrator by letter dt.13.03.2014.

5. On the same issue of appointment of Arbitrator, the applicant addressed letters on 29.03.2014, 04.02.2015, 06.05.2015, 21.03.2016 and 23.07.2016. But the respondents did not choose to appoint any Arbitrator, and also did not reply to these letters.

6. The applicant, therefore, has filed the instant Arbitration Application on 16.10.2017 invoking Clause (70) of the General Conditions of Contract which provides for resolution of disputes by Arbitration and which states :

“70. Arbitration : - All disputes, between the parties to the Contract (other than those for which the decision of the C.E.W. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer office to be appointed by the authority mentioned in the tender documents.”

7. The counsel for applicant submitted that the respondents cannot take the plea that Arbitrator cannot be appointed by simply rejecting the claims of the applicant vide letter dt.13.03.2014.

8. Sri K. Lakshman, learned Assistant Solicitor General, appearing for respondents, disputed the Arbitration Clause quoted by applicant and relied on another Arbitration Clause which is as under :

“Arbitration : All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by contract expressed to be final and binding) shall, after written notice by either party to the contract to the other of them, be referred to the sole arbitration of an (serving officer having decree in Engineering or equivalent or having passed final / direct final examination of sub-division II of institution of Surveyor (India) recognized by the Government of India) to be appointed by the authority mentioned in the tender documents.”

9. He also contended that there has been full payment to the applicant under the contract, and therefore, there is no necessity to refer the matter to Arbitration.

10. Under Section 11(6-A) of the Act, this Court while deciding an Arbitration Application has to confine itself to the examination of an existence of an Arbitration Agreement. It cannot go into the aspect whether the respondents have a valid defence to the claim made by the applicant or not. Therefore, the contention raised by the respondents

that there is no dispute at all which can be referred to arbitration, cannot be examined by this Court.

11. Moreover, the Arbitration Clause quoted by both parties have slightly different wording, but both contemplate the appointment of an employee of the respondent, i.e., Engineer, Officer or a Serving Officer with engineering qualification to be the Arbitrator.

12. Under Schedule V and Schedule VII, an employee of the respondent is not to be appointed as an Arbitrator because the employment of such individual would raise justifiable doubts as to his independence and impartiality.

13. Therefore, in these circumstances, I deem it appropriate to appoint Justice C.V.N. Sastri, R/o. H.No.6-2-45/10, A.C. Guards, Holy Mary Road, Hyderabad – 500 004, Telephone Nos. 040-2339 6376 (R), 040-2323 2540 (O) & 99123 71770, as the Sole Arbitrator to adjudicate the disputes between the parties arising out of the agreement dt.24.12.2010.

14. Accordingly, the Arbitration Application is allowed. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Arbitration Application shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.05.2019

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