

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
17~03~2020	07~05~2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.114 of 2020

Jyoti Limited
Represented by Mr.T.Srinivasan, Senior Manager,
Having its registered office at:
Nanubhai Amin Marg,
Industrial Area,
P.O.Chemical Industries,
Vadodara-390003. .. Petitioner

Marg Limited
Having its registered office at:
Marg Axis, 4/318,
Old Mahabalipuram Road,
Kottivakkam,
Chennai 600041. .. Respondents

.Vs.

Prayer: Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator on behalf of respondent in terms of Article 1 of the Contract dated 15.03.2012 read with Clause 230.4(f) of the General conditions of

Contract (GCC) BECL Tender Specification TCE-5403A-H-613-406.

For Petitioner : Mrs. S. Arjun Suresh

For Respondent : Dr.S. Padma

ORDER

It is the contention of the Respondent that this Court does not have jurisdiction under Clause 20.4(f) and also 20.4(g) of GCC the venue of any such arbitration shall be Bhavanagar, Gujarat. Hence, prayed for dismissal of the Petition.

2. Learned counsel for the Petitioner submitted that though the dispute between the parties has to be resolved as per Clause No.20GCC of Specification TCE-5403A-H-613-406, the Petitioner and Respondent are not the parties to the GCC. Whereas, specific contract has been executed between the Petitioner and the Respondent dated 15.03.2012 in respect of sub-contract. Article 7 of the Contract shows that the parties have exclusive jurisdiction at Chennai. The above clause makes it very clear that the parties have specifically agreed to resolve the disputes

arising out of contract at Chennai and consequently entered contract between them on 15.03.2012. Hence, this Court has jurisdiction to appoint Arbitrator.

3. Whereas the learned counsel for the Respondent submitted that in the contract it is agreed between the parties that dispute would be resolved as per Clause No.20 of the General conditions of Contract (GCC) BECL Tender Specification TCE-5403A-H-613-406.

4. Admittedly, the contract dated 15.03.2012 between the Petitioner and the Respondent in respect of sub-contract works allotted by the original contractor viz.,the Respondent herein. The Respondent in turn awarded sub-contract to the Petitioner herein as per the contract dated 15.03.2012. The Petitioner is not party to the original contract. It is relevant to extract Clause in the agreement dated 15.03.2012:

“DISPUTE RESOLUTION

In case of any dispute or difference between the PURCHASER/PRINCIPAL and the CONTRACTOR touching or concerning this contract, it will be resolved as per clause No.20 GCC of Specification TCE-5403A-

H-613-406 .”

Article 7 of the Contract reads as follows:

“ARTICLE 7

The Contract shall be governed in accordance with the Laws of India. The Civil Court having original jurisdiction over Chennai shall have exclusive jurisdiction to try any matter arising out of the contract.”

5. The General conditions of the Contract of the Bhavnagar Energy Company Limited (BECL) Clauses 20.4(f) and 20.4(g) are read as follows:

“20.4.(f)

The dispute or difference shall be referred to the arbitration of sole Arbitrator if both the parties hereto agree to and mutually appoint such an arbitrator in writing. Failing that to arbitration of two arbitrators one of whom shall be nominated by the Contractor and the other by Purchaser in writing and in the event of such arbitration, not agreeing, to the arbitration of an umpire to be nominated by such arbitrators before

proceeding with the reference, and in case the arbitration cannot agree as to the appointment of an umpire and if either of the parties hereto fails to appoint an arbitrator as aforesaid, to the arbitration of an umpire or arbitrator, as the case may be to be appointed by a court of competent jurisdiction at Bhavanagar, Gujarat. The award to be given by such said arbitrator, arbitrators or umpire, as the case may be shall be final and binding on both the parties hereto. Any such reference or arbitration proceedings shall in all respects confirm with this to be governed by the provisions of the Indian Arbitration and Reconciliation Act, 1996, the Rules there under and all statutory modifications or re-enactment thereof for the time being in force.

20.4.(g)

The venue of any such arbitration shall be Bhavanagar, Gujarat. Upon any and every such reference, the assessment and award of the costs of and incidents to the reference and award thereon shall be in the discretion of the sole arbitrator or arbitrators or the umpire as the case may be notwithstanding the existence of any such differences, disputes or all

reference thereupon, the obligations under the agreement shall continue, to be fulfilled by both the parties, hereto during such arbitration proceedings.”

6. Though Clauses 20.4(f) and 20.4(g) deals with the manner in which arbitrator to be appointed and the matter to be resorted as per contract viz., General Conditions of Contract, the Specification No.TCE-5403A-H-613-406 is between the Respondent and the Bhavnagar Energy Company Limited and not the Petitioner herein. Though Article 1 of the subsequent contract between the Petitioner and the Respondent makes it clear that they are also agreed for arbitration. The parties confining the specific jurisdiction in later Clause under Article 7 makes it clear that in respect of resolution of disputes they agreed to have their dispute resolved at Chennai excluding all other courts. The parties consciously agreed to have their disputes resolved at Courts within the jurisdiction of Chennai,. The GCC between Respondent and BCEL to have venue of the Arbitration at Bhavanagar consciously novated or altered by the parties by Article 7 of the Contract. When the parties have substituted a new contract and agreed for particular jurisdiction excluding jurisdiction of other courts, it cannot be said that this Court has no jurisdiction to

entertain this Petition. What has to be seen is exercising power under Section 11 is existence of the arbitration agreement between the parties. It is not disputed by both sides to refer to the Arbitration, only dispute raised by the Respondent as to the jurisdiction. In view of the subsequent contract between the parties, though the parties have agreed to Clause 20 of the GCC, in view of the subsequent clause in the contract confining the jurisdiction at Chennai makes it very clear that both have agreed to have the dispute resolved at Chennai. If really the parties are intended to follow Clause 20 of the GCC in entirety, there is no need whatsoever to include separate clause viz., Article 7 confining the jurisdiction in Chennai courts.

7. The subsequent clause in the contract, as to the venue of Arbitration has been altered in Article 7 of the Contract. When the Articles 1 to 7 read together makes it clear that though the parties have consciously agreed to refer the dispute to Arbitration as per Clause 20. The parties have specifically agreed to submit to the jurisdiction of the Courts at Chennai and excluding other courts. In such view of the matter, as the parties themselves have altered Clause 20 as to the place of Arbitration in subsequent contract between the parties binding on them.

8. For the foregoing reasons, Justice D. Murugesan (former Chief Justice of High Court of New Delhi), having residence at No.11-A, M.D. Sitaraman Avenue, 7th Cross Street, V.G.P.Layout, Injambakkam, Chennai-600115, will take over the charge as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

9. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

07.05.2020

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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Justice D. Murugesan
former Chief Justice of High Court of New Delhi,
No.11-A, M.D. Sitaraman Avenue,

7th Cross Street, V.G.P.Layout,
Injambakkam, Chennai-600115.

N. SATHISH KUMAR, J.

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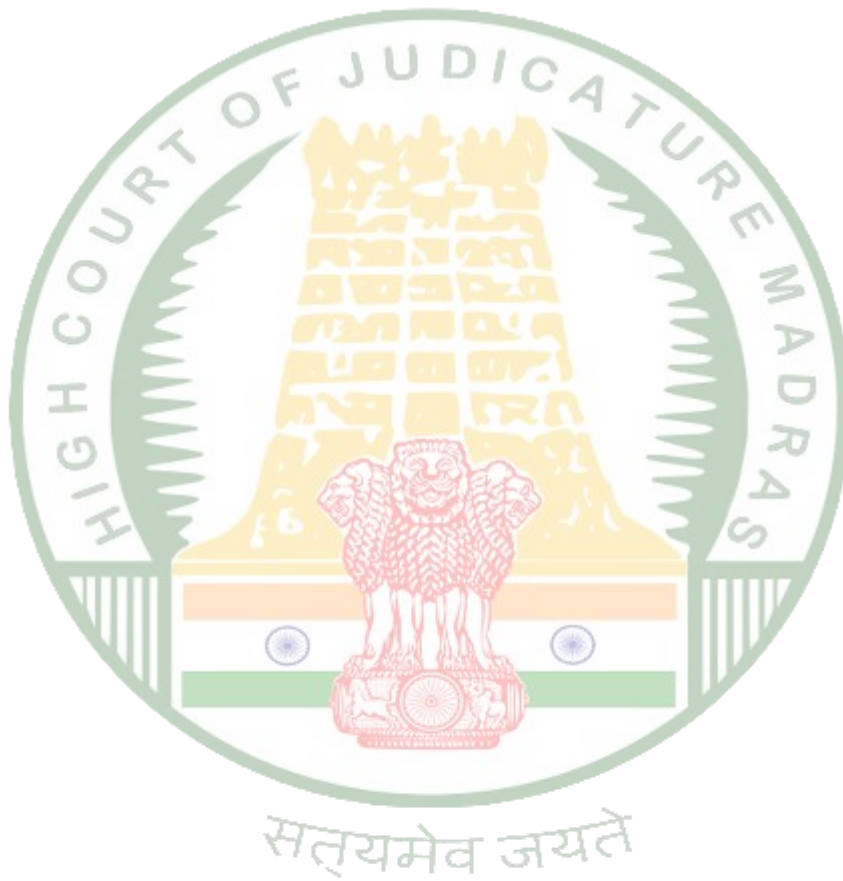


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