

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.462 of 2020

M/s.Karpara Project Engineering Private Limited,
rep.by its authorised signatory,
Room No.405, SNS Platina,
Near Reliance Mall, Behind J.H. Ambani School,
Vesu Road, Surat – 395 007. ...Petitioner

-V-

M/s.BGR Energy Systems Limited,
Plot 5 (A-5), Pannamgadu Industrial Estate,
Ramapuram Post,
Sullurpet (T), Nellore District – 524 401,
Andhra Pradesh,
Administrative Office at
443, Anna Salai,
Guna Complex, Teynampet,
Chennai – 600 018. ...Respondent

Prayer: Original Petition filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 praying to appoint an Arbitrator for the purpose of adjudicating upon the disputes which has arisen between the petitioner and the respondent.

For Petitioner : Mr.T. Ravichandran

For Respondent : Mr.D.Ravichander

ORDER

The above application is filed for appointing an Arbitrator to resolve the disputes between the petitioner and the respondent.

2.The petitioner would contend that they had entered into an Work Contract with the respondent for erection, testing and commissioning of Boiler Package Unit-I of 2x600 MW Kalisindh Thermal Power Project, Rajasthan. The petitioner would submit that despite the respondent extending the project due to various reasons attributable to them, they had retained amounts from the final bill of the petitioner and this forms the disputes between the parties. The petitioner therefore invoked the arbitral clause contained in Addendum - 1 of the General conditions of the Contract.

3.The petitioner had addressed a letter to the respondent on 25.02.2020 asking them to agree for the Arbitration, however, there was no response from them. In these circumstances, the petitioner has invoked the provisions of Section 11(c) of the Arbitration and Conciliation Act, 1996.

4.The respondent who was entered appearance has filed a counter *inter alia* contending that the Contract between the parties is governed by only Purchase Orders. Considering the fact that these documents do not provide for arbitration, this application deserves to be dismissed.

5.When the matter came up for hearing today the learned counsels have made their submissions on the basis of their respective pleadings.

6.Heard the learned counsel appearing on either side and perused the material on record.

7.A perusal of the Work Order issued by the respondent to the petitioner and the Addendum - I thereto would indicate that the terms and conditions of the Work Order should be in accordance with the tendered documents including the GCC, LOI and MOM in various dates and these documents to be form part and parcel of the Work Order. The General Conditions of the Contract (GCC) is appended in Addendum-I. Class 19 deals with the arbitration and would read as follows:

"any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the fules of arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. The seat of arbitration shall be Chennai. All arbitration proceedings shall be carried out in English."

8Therefore, it is clearly evident that the parties had agreed to resolve their disputes through arbitration. The defence taken by the respondent is therefore baseless.

9. Accordingly, it is ordered as follows:

i) The Honourable Mr. Justice D.Murugesan, Chief Justice of Delhi High Court (Retired), residing at No.11-A, M.D. Sitaraman Avenue, 7th Cross Street, V.G.P. Layout, Injambakkam, Chennai – 600 115, Contact No.8826253366 is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator may, 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 the order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

14.12.2020

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

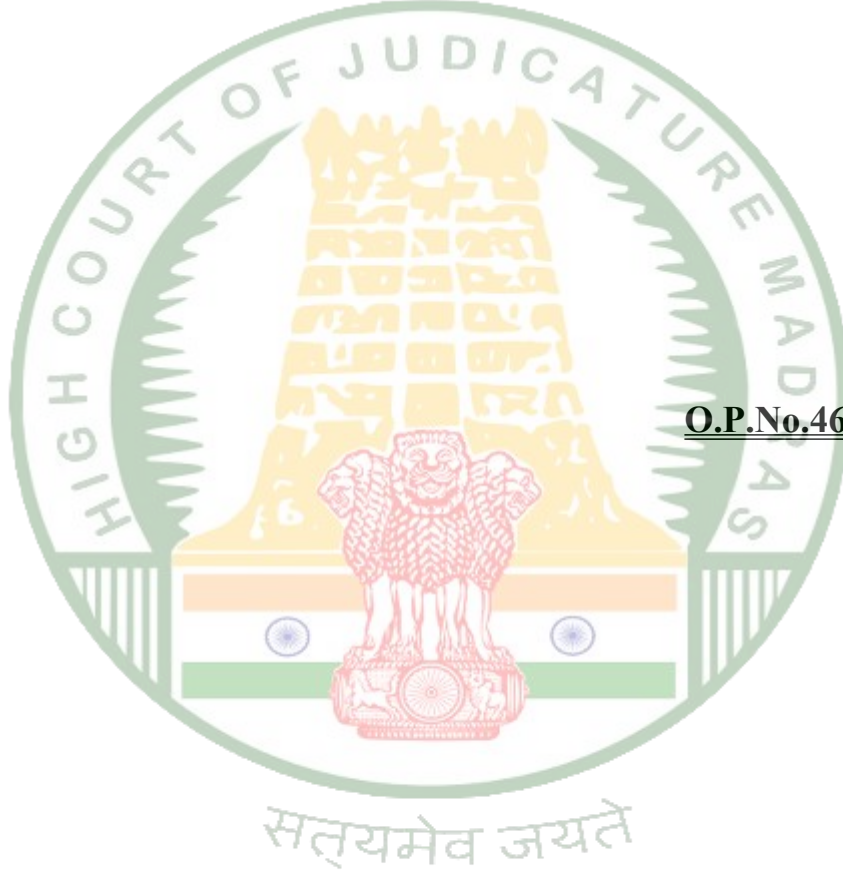
To

The Honourable Mr. Justice D.Murugesan,
Chief Justice of Delhi High Court (Retired),
No.11-A, M.D. Sitaraman Avenue,
7th Cross Street, V.G.P. Layout,
Injambakkam, Chennai – 600 115.

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P.T. ASHA. J.

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