

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2020

Coram

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Original Petition No.705 of 2019

M/s Arunachalam Projects & Infrastructure Pvt Ltd.
Arunachala Building,
2nd Floor, No.107/76, Avvai Shanmugam Salai (Lloyds Road),
Royapettah, Chennai, Tamil Nadu 600 014.
Rep. by V.Parthasarathy ... Petitioner

Vs.

E.Mohan,
M/s SKLS Lorry Service,
Survey No.93/1c/2b, GNT Road,
Redhills, Chennai 600 052. ... Respondent

Prayer: Original application filed under Section 11 of the Arbitration and Conciliation Act, 1996 to Appoint an Arbitrator in furtherance of clause 49 of the 'Agreement' dated 11.06.2014 to adjudicate upon the disputes/differences between the petitioner and the respondent and direct the respondent to pay the costs of these proceedings.

For Applicant : Mr.Prerna Khatri

M/s A.K.Mylsamy & Associates LLP

ORDER

This application has been filed to appoint an Arbitrator for reference of the dispute arisen between the petitioner and the respondent out of the service contract dated 11.06.2014 entered between the petitioner and respondent.

2. Despite service of notice and effecting paper publication and also printing the name of the respondent in the cause list, none appeared for the respondent.

3. The case of the petitioner is that he had become a successful tender as per the Letter of Intent dated 04.06.2014 and " Articles of Agreement" has also been entered into between the parties on 11.06.2014 and the petitioner had executed the whole of the " Project " in accordance with the specifications, conforming exactly to the given designs, drawings and instructions given on behalf of the respondent and the Architect and subject to necessary approvals in accordance.

4. The further case of the petitioner is that the Articles of Agreement contains Arbitration clause, which clearly shows that in the event of any dispute among the parties arising out of the contract or carrying out of the works, shall be initially referred to and settle by the Architect and the decision of the Architects with respect to any of the excepted matters shall be final.

5. The learned counsel for the petitioner submitted that the petitioner had executed all the works and completed the project, as per the Articles of Agreement, and on satisfaction of the completion of the project, the Architect had also issued certificate, duly approving and confirming the execution of the work, in accordance with the contract. However a sum of Rs.96,74,005.96 is due and payable by the respondent to the petitioner for the bills, duly certified by the Architect. He further submitted that though the petitioner had sent notices dated 14.07.2018 and 01.11.2018 and also sent a notice dated 26.06.2019 under Section 11 of the Arbitration and Conciliation Act to the respondent to settle the amount arising out of the claim under the agreement, to be paid by the respondent to the petitioner, there was no reply from the respondent. Hence this application to appoint an Arbitrator to resolve the dispute.

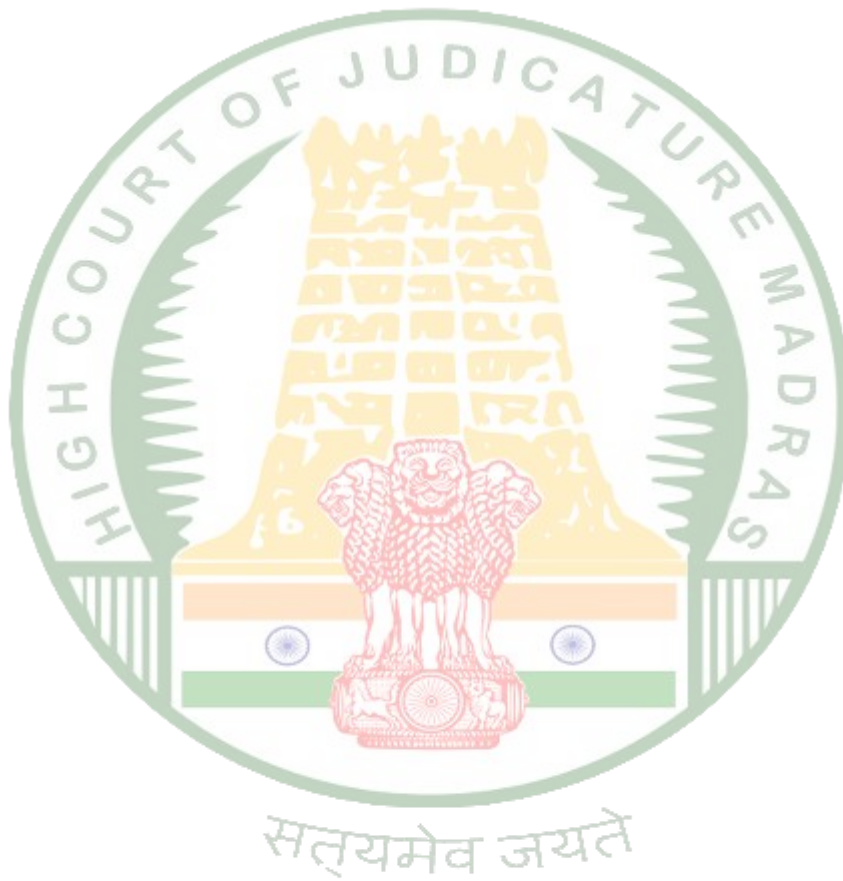
6. Admittedly, the dispute between the petitioner and the respondent is arising out of the contract entered into between them. As per Clause 49 of the "Articles of Agreement", the parties are agreed to resolve their dispute before the Architect. When there is a specific agreement between the parties to resolve the dispute before the Arbitrator and the parties are also agreed to bind the same, and though arbitration notice has been served on the respondent there was no reply from them, this court is inclined to appoint an Arbitrator to adjudicate upon the disputes/differences between the petitioner and the respondent.

7. In such view of the matter, **Mr.Manickam, District Judge (retired), No.22, I floor, Raj Enclave, Lakshmi Nagar, VI Street, Jalladianpet, Medavakkam, Chennai 600 100** is appointed as an 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. It is open to the respondent to raise the counter claim before the Arbitrator. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

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

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N.SATHISH KUMAR, J.

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