

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.01.2020

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THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.816 of 2019

G.A.Projects Private Limited,
Represented by its:
Managing Director - Mr.G.A.Sridhar,
No.3, K.H.Road, Ennore,
Chennai - 600 057.

.. Petitioner

VS.

Kamarajar Port Limited,
4th Floor, Super Speciality Diabetic Centre,
Rajaji Salai, Chennai 600 001.

.. Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to a) appoint the 2nd arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (as amended) who shall then together with the Arbitrator already appointed by the Petitioner appoint the 3rd Arbitrator to resolve the disputes between the parties arising under the Contract No.:18 of 2013 dated 10-12-2013 designated as the “Development of Road Connectivity - Providing concrete road to the road leading to stack yard from main road up to Electrical sub-station” b) grant the cost of this petition to the Petitioner and c) pass such further or other orders as may be deemed just and necessary in the circumstances of the case and thus render justice.

For Petitioner	: Mr.D.Percivul Pericles.
For Respondent	: Mr.M.T.Arunan, Standing Counsel.

ORDER

Mr.D.Percivul Pericles, learned counsel on record for petitioner and Mr.M.T.Arunan, learned Standing Counsel for respondent are before this Court.

2. Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed *inter alia* under Section 11(6) of 'The Arbitration and Conciliation Act, 1996' (Act No.26 of 1996) which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

3. The prayer in instant OP is for appointment of an arbitrator.

4. Both learned counsel submit that existence of arbitration agreement between the parties is not in dispute. Both counsel submit that the arbitration agreement between the parties within the meaning of Section 7 of A and C Act is in the form of a clause/agreement of contract No.18 of 2013, dated 10.12.2013.

5. Considering the value of contract and the claim in instant matter, both learned counsel make a request that the size of arbitral tribunal may please be downsized and a sole arbitrator may please be appointed.

6. In the light of sub-section (6-A) of Section 11 which has been elucidatively and instructively explained by Hon'ble Supreme Court in ***Duro Felguera, S.A. versus Gangavaram Port Limited*** reported in (2017) 9 SCC 729 and ***Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman*** reported in (2019) 8 SCC 714, this Court being *prima facie* satisfied that the existence of arbitration agreement between the parties is the pivotal test in instant OP. This Court deems it appropriate to extract the most relevant paragraph in ***Mayavati Trading*** and the same reads as follows:

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA."

(underlining made by this Court to supply emphasis and highlight)

7. This Court therefore proceeds to appoint Mr. Roshan Balasubramanian, Advocate of "Sivanandaraaj & Partners" Indian Chambers (SICCI) Annex

Building, 2nd Floor, No.6, Esplanade, Chennai - 600 108, Ph: 044-242162082, Mobile:9962097003, as sole arbitrator. Sole arbitrator is requested to enter upon reference and adjudicate upon the arbitrable disputes that have arisen between the parties and pass an award in accordance with the A and C Act. The arbitration proceedings shall be conducted under the aegis of the Madras High Court Arbitration Centre, Chennai - 600 104, more particularly, in accordance with The Madras High Court Arbitration Proceedings Rules, 2017 and The Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017.

8. Instant OP disposed of on above terms. There shall be no order as to costs.

29.01.2020

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Speaking Order/Non-Speaking Order

Index : Yes/No

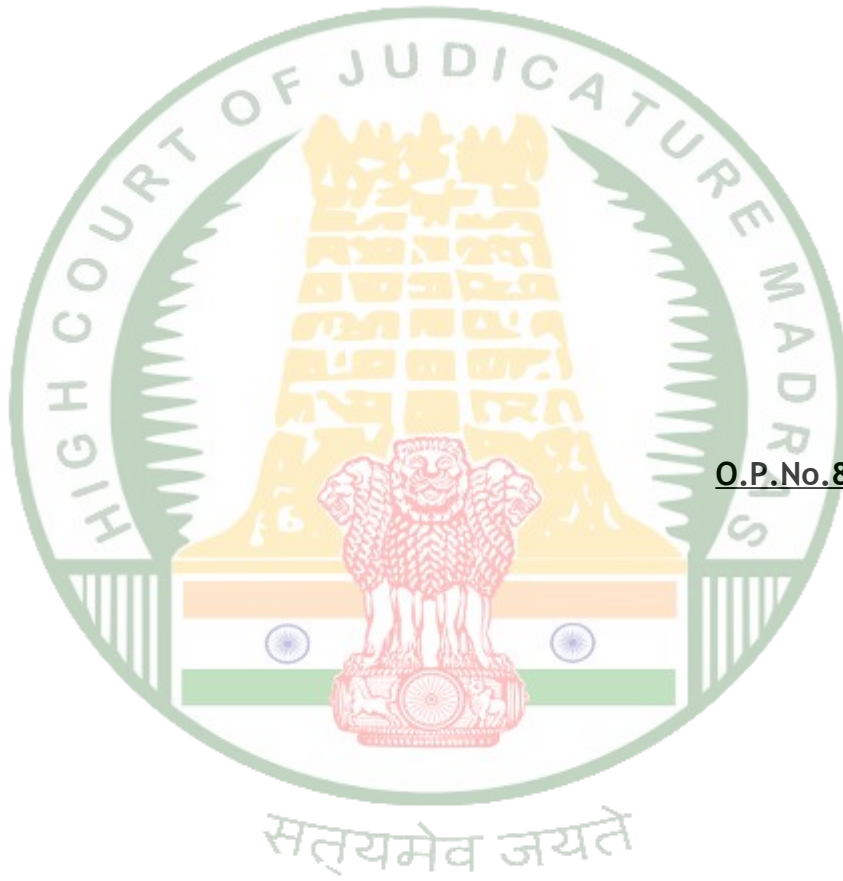
Internet: Yes/No

Note:

Registry is directed to communicate this order to Mr. Roshan Balasubramanian, Advocate, "Sivanandaraaj & Partners" Indian Chambers (SICCI) Annex Building, 2nd Floor, No.6, Esplanade, Chennai - 600 108, Ph: 044-242162082, Mobile:9962097003, forthwith.

M.SUNDAR,J.

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