

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.79 of 2019

ORDER :

This Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act") is filed by the applicant seeking appointment of an Arbitrator for resolution of the disputes between the applicant and the respondent covered by the agreement dated 21-06-2017 for not supplying the equipment in terms of the purchase order dated 25-06-2017 issued by the applicant in favour of respondent.

The case of the applicant is that himself and respondent entered into an agreement dated 21-06-2017 for supply of machinery by the respondent in respect of edible cutlery and paid an amount of Rs.55,80,000/- but the respondent failed to supply the machinery. As such, the applicant issued a legal notice dated 08-05-2019 terminating the contract and for return of amounts and claiming the damages. It is also indicated in the legal notice that in case the respondent failed to comply the same, the applicant will invoke arbitration clause. The respondent replied to the same by way of reply notice dated 02-06-2019 disputing the claims. As such, the petitioner issued another notice dated 14-06-2019 nominating the Arbitrator. But there is no response from the respondent. Hence, the present application is filed.

Though notice is issued and served on the respondent, no counter affidavit is filed denying the contents of arbitration application.

The agreement dated 21-06-2017 contains dispute resolution clause, the relevant portion of which reads as under:

“21.1 The parties shall attempt to settle any dispute arising from and/or in connection with, this agreement by way of negotiation. To this end, each of the parties shall use its reasonable endeavours to consult or negotiate with the other party in good faith, and in recognizing the parties mutual interests; attempt to reach a just and equitable settlement satisfactory to both parties. If the parties have not settled the dispute by negotiation within thirty (30) days from the date on which negotiations are initiated, the dispute shall be referred to, and finally resolved by, arbitration under the Arbitration and Conciliation Act, 1996 with all subsequent amendments made thereto in the act.

21.2. The parties irrevocably agree that all questions, disputes or differences whatsoever arising under this agreement or in connection therewith including any question relating to existence, meaning and interpretation of this agreement or any alleged breach thereof, the same shall be referred to a sole arbitrator nominated and appointed with the consent of both the parties for the purpose of resolution of dispute. The Party invoking the Arbitration Clause shall give a 30 day written notice requesting nomination of a Sole Arbitrator to the other party. If both the parties fail to appoint a sole arbitrator within the stipulated period of (1) one month from the date of receipt of the notice, the party invoking the Arbitration Clause shall be entitled to invoke the Jurisdiction of the Hon'ble Chief Justice of High Court for nomination of the same. After the appointment of the Sole Arbitrator, the Arbitrator shall enter into reference within a period of 30 days from the date of its constitution.

21.3 The Parties agree that the Arbitrator shall be entitled to give interim awards/directions regarding the disputes and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The arbitration shall otherwise be carried out in terms of and in accordance with Arbitration and Conciliation Act, 1996 with modifications made from time to time and the provisions of the said act shall apply to the arbitration proceedings. The interim/final award of the Arbitrator shall be binding on both the parties.

21.4 The language of the arbitration shall be English.

21.5 The Arbitrator shall be entitled to give interim awards/directions regarding the disputes and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The arbitration shall otherwise be carried out in terms of and in accordance with the Arbitration and Conciliation Act, 1996 with modifications made from time to time and the provisions of the said act shall apply to the arbitration proceedings. The interim/final award of the Arbitrator shall be binding on the parties.”

Learned counsel for the applicant by referring to request for refund of advances filed at material papers at page No.41 submits that efforts were made to settle the matter amicably but the same were not fructified. He also submits that the applicant issued notice on 08-05-2019 to repay the amount and also on 14-06-2019 invoking arbitration clause.

In view of the existence of arbitration clause and in view of the facts and circumstances stated above, the application needs to be allowed.

Accordingly, this Arbitration Application is allowed appointing Hon'ble Sri Justice V.Bhaskara Rao, retired High

Court Judge, as the sole Arbitrator for resolution of dispute(s) between the applicant and respondent, arising out of agreement dated 21-06-2017, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23-10-2015, which shall be borne by both parties in equal measure. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

A. RAJASHEKER REDDY, J

02-01-2020

Note:

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Hon'ble Sri Justice V.Bhaskara Rao,
Plot No.145, East Kalyanpuri,
Near Shiva Temple, Uppal Road,
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B/o.

Nvl

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.19 of 2019



31.12.2019
(Msr)