

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.94 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 parties as agreed under lease deed dated 25-10-2010.

The case of the applicant is that the applicant engaged in the business of power generation and supply. The applicant planned to set-up 1 x 300 MW thermal power project approached the respondent for allotment of land for establishing and operating a power plant of capacity of 2 x 150 MW for generation of thermal power plant. Accordingly, land admeasuring 153 acres situated at Eastern Sector, APSEZ, Atchuthapuram, Visakhapatnam bearing plot Nos 57 to 61 was allotted by respondent in favour of applicant vide allotment letter dated 02-08-2010. Thereafter, a lease deed dated 25-10-2010 was entered into between the applicant and respondent. In terms of which, the subject land was granted lease for a period of 33 years to the applicant and the period of lease deed would commence from the date of handing over the complete physical possession of the subject land to the applicant by the respondent. Though complete physical possession of subject land was not handed over by the

respondent which is severely affecting the project of the applicant, vide show-cause notice dated 03-04-2019 called upon the applicant to show-cause why the lease deed should not be cancelled as the project was to be completed by September, 2013. In view of the disputes arose between the parties, the applicant got issued legal notice dated 29-07-2019 invoking the arbitration clause contained in the lease deed dated 25-10-2010 and referred his claim as Rs.50 crores. As the respondent has not responded to the same, the present Arbitration Application is filed.

Heard learned counsel for the applicant.

Despite service of notice, none appears for the respondent and no counter affidavit is filed.

Clause No.11 of the lease deed dated 25-10-2010 provides for Arbitration, in case of any disputes between the parties, which reads as follows:

11. "If any dispute arises between the parties hereto during the subsistence or thereafter in connection with the reasonableness, validity, implementation or alleged material breach of any provisions of this Agreement or regarding any question including the question as to whether the termination of this Agreement by any Party hereto has been legitimate, the Parties thereto shall endeavor to settle such disputes amicably. The attempt to bring about such amicable settlement shall be considered to have failed as soon as one of the Parties hereto, after not less than 30 days of such attempt, gives notice of arbitration to the other Party in writing.

- i) The dispute shall be referred to a sole arbitrator mutually agreed to be appointed by the Parties to the dispute. In case, the parties fail to agree on a sole Arbitrator, each Party to the dispute shall nominate one arbitrator and the two arbitrators so appointed shall appoint a third arbitrator, who shall preside the arbitration proceedings to be held at Hyderabad. The arbitration proceedings shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any amendment thereto from time to time.
- ii) The Arbitrator's award shall be final and binding on all the Parties and shall be substantiated in writing. The Court of Arbitration shall also decide on the costs of the Arbitration proceedings. This will however, be subject to the provisions of the Special Economic Zone Act, 2005. "

By invoking the above said Arbitration Clause, the applicant has already issued a Legal Notice dated 29-07-2019 nominating the Arbitrator, however, there is no response from the respondent. More so, the said assertions are not disputed by filing counter affidavit. Since the value mentioned in the arbitration application is over Rs.50 crores, I deem it fit to nominate Former Judge of Supreme Court. Therefore, the present application deserves to be allowed.

Accordingly, this Arbitration Application is allowed appointing Sri Justice Madan B.Lokur, Former Judge of Supreme Court, as the sole Arbitrator for resolution of dispute(s) between the applicant and the respondent, arising out of the lease deed dated 25-10-2010 in accordance with

the provisions and mandate of the Act of 1996. No order as to costs.

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

A. RAJASHEKER REDDY, J

02-01-2020

Note:

Office to mark a copy to:

Sri Justice Madan B.Lokur,

A-26, First Floor, Gulmohar Park,
New Delhi-110049.

B/o.

Nvl



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