

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION No. 100 OF 2015

ORDER :

This application is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (*for short 'the Act'*) to appoint an arbitrator to resolve the disputes between the applicant and the respondent.

It is the case of the applicant that the applicant was awarded contract for supply, installation, testing and commissioning of Auxiliary (packing) machinery of capacity 4000 MTs per hr-4 Nos by the respondent vide proceedings dated 30.03.2013. In pursuance to the same, an agreement was entered into between the applicant and the respondent on 05.04.2013 and petitioner supplied the material, as agreed. As the respondent failed to pay as per the agreement, the petitioner got issued notice on 23.03.2015 for payment of the amount as well as invoking the arbitration clause in the agreement dated 05.04.2013. The respondent issued reply notice on 12.05.2015 stating that the Telangana Foods (formerly AP Foods) is listed under scheduled IX of the AP Reorganisation Act, 2014 and its bifurcation is not yet completed between the two states. Since the bifurcation is pending, the government had orders for freezing of accounts till the final orders are issued on demerger, which is in its final stage and expected to be completed very soon; that the bank accounts of all the banks have been frozen by the government; that the respondent had already informed same to the government and also to the applicant; that the applicant was informed about the correspondence made with the concerned banks and circulars issued by the Government of Telangana. It is also stated that the

balance 50% would be paid only after erection and inspection made by the third party. As the applicant had not installed the machinery and not tested by the competent authority, the respondent had not paid the balance consideration and that the respondent is ready to pay the balance consideration as per the agreement as and when the applicant installs the machinery and tested by the competent authority made by the respondent and that in the meanwhile, the bifurcation would be finalized. Aggrieved by the action of the respondent in not paying the amount, the present application is filed.

Though notice is served, no counter affidavit is filed opposing the assertions made by the applicant in the affidavit filed in support of this application.

Learned counsel for the applicant submits that when the applicant requested for payment of amount, respondent had addressed letter dated 25.04.2015 stating that the accounts are freezed because of pendency of bifurcation of the State and that the payment will be made as and when accounts are defreezed. Now, contrary to the same, the respondent had taken different stand in the reply notice dated 12.05.2015, but existence of arbitration clause in the agreement is not disputed.

It is to be seen that agreement dt.05.04.2013 contains the Arbitration Clause at Clause-21 which reads as follows;

“21. Resolution of Disputes:

21.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

21.2. In case of Disputes or difference between the Purchaser and a supplier relating to any matter arising out of or connected with this Agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators

one each to be appointed by the Purchaser and the Supplier. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as presiding arbitrator.

21.3 Arbitration proceedings shall be held at Hyderabad, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

21.4 The decision of the majority of the arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation etc., of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.”

Invoking the aforesaid clause, the Applicant issued notice to the respondent dated 23.03.2015, which goes to show that the applicant had informed the same. Though the respondent replied through notice dated 12.05.2015 disputing the claim of the applicant, but, it did not dispute the existence of arbitration clause in the letter addressed by it to applicant on 25.04.2015.

The assertion made by the Applicant that there exists arbitration clause in the agreement and that they have issued notices to the respondent for payment of loan amount, is not in dispute. The respondent also had not filed any counter affidavit disputing the same.

Since there exists arbitration clause in the agreement and the Applicant has invoked the same by issuing notices to the respondent this application needs to be allowed.

In view of the same, the Arbitration Application is allowed appointing Honourable Sri Justice B.Seshasayana Reddy, former High Court Judge, as the sole Arbitrator, for resolution of disputes between the parties. 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 thereto, miscellaneous petitions, if any pending in the Arbitration Application, shall stand closed.

A.RAJASHEKER REDDY, J

Dt.06-02-2020

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B/o.kvs



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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