



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2021

PRONOUNCED ON : 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

C.R.P.NO.897 OF 2021

AND

C.M.P.NO.7337 OF 2021

IG3 Infra Limited,  
(Formerly known as ETL Infrastructure  
Services Limited & also as Indian Green  
Grid Group Limited)  
"Chennai One"  
Pallavaram-Thoraipakkam 200 Feet Road,  
Thoraipakkam, Chennai 600 097.

.. Petitioner

Vs.

1.D.Indira

2.D.Ramachandran

.. Respondents

Prayer:

Petition filed under Article 227 of the Constitution of India, against the order of the Hon'ble Sole Arbitrator in Application No.1 of 2020 in A.F.No.182 of 2019 dated 26.03.2021 passed in petition filed under Section 16 of the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr.V.Raghavachari for  
Mr.M.Narayanaswamy

For Respondents : Mr.R.Palaniandavan

ORDER

Heard Mr.V.Raghavachari, learned counsel appearing for the revision petitioner and Mr.R.Palaniandavan, learned counsel appearing for the respondents.

2. This revision petition has been filed against the order of the learned Arbitrator passed in Application No.1 of 2020 in A.F.No.182 of 2019 dated 26.03.2021, rejecting the contentions raised on behalf of the petitioner herein as to the



maintainability of the arbitration proceedings. The maintainability issues have been raised by the petitioner herein in his application filed under Section 16(2) and 16(5) of the Arbitration and Conciliation Act, 1996, mainly on two grounds. (i) The arbitration proceedings initiated by the claimants is not maintainable. (ii) The subject matter of arbitration proceedings is barred by limitation.

3. The learned counsel appearing for the petitioner would submit that the learned Arbitrator while dealing with the objections in regard to the proceedings being barred by limitation, has not considered the limitation aspect as a preliminary examination, but has chosen to consider the same together with the merits of the claims of the parties. If the learned Arbitrator is directed to deal with the objections on a preliminary consideration, the petitioner herein will not press the present Civil Revision Petition.

4. At this, the learned counsel for the respondents who are the claimants before the Arbitral Tribunal would submit that he has no objection for the learned Arbitrator to consider the issue of limitation as a preliminary point for adjudication and in such event, the present civil revision petition could be disposed of without any further adjudication on the other aspects of maintainability raised by the petitioner herein whether the claimants herein have a right to initiate arbitration proceedings or not. However, the learned counsel would also submit that he has serious legal objection as to the maintainability of the Civil Revision Petition against the orders passed by the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act. He would submit that the claimants' right to question the maintainability of the Civil Revision Petition, if reserved and left open for it to be raised if need arises in future, he would have no objection for the course of action suggested by the learned counsel for the petitioner.

5. The learned counsel for the petitioner would also agree to such right being reserved for the respondent claimants.

6. The learned Arbitrator in the order dated 26.03.2021, while considering the plea of limitation, appears to have not gone into the rival claims and the materials that touch upon the aspect of limitation, but, has rejected the claim on the ground that no finding need to be rendered at the preliminary stage and decided to take up the issue of limitation in the final stage of the proceedings.

7. According to the learned counsel for the petitioner, since the issue of limitation goes to the root of the matter as



to the maintainability of the very arbitration proceedings, atleast the learned Arbitrator may be directed to consider the same with reference to the claims of the rival parties and the supportive materials without simply relegating the important aspect to be taken up along with the main adjudication of the dispute qua parties.

8. The learned counsel for the respondents has also agreed with the above submission of the learned counsel for the petitioner. As both the learned counsel for the parties have agreed that the objection relating to the application of limitation is to be considered as a preliminary issue, this Court without going into the legality of filing of civil revision petition against the orders of the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996 and also without going into the merits and demerits of the respective contention of the parties, dispose of the civil revision petition as under :

(i) In view of the fact that both the learned counsels appearing for the rival parties expressed that they would have no objection for the learned Arbitrator, framing a preliminary issue on the aspect of limitation being applicable to the subject proceedings, the learned Arbitrator may frame a preliminary issue to render a finding on the question of limitation being pleaded by the petitioner herein and opposed by the respondents herein.

(ii) It is open to the learned Arbitrator to call for any evidence from the parties for the purpose of rendering any finding on the issue of limitation as agreed by the parties herein. It is also made clear that whether the civil revision petition is maintainable against the orders of the Arbitral Tribunal under Section 16, is left open to the parties to be agitated in case any need arises in future.

9. With the above observation, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk



To

The Arbitrator,  
The Hon'ble Mr. Justice K.N. Basha, (Retd.,)  
No.25/1, Dr. Ambedkar Road, F-1,  
"Star" North Thirumalai Nagar,  
Villivakkam, Chennai-49.

+2cc to Mr. M. Narayanaswamy, Advocate, S.R.No.36228  
+1cc to Mr. R. Palaniandavan, Advocate, S.R.No.36364

C.R.P.No.897 of 2021 and  
C.M.P.No.7337 of 2021

CP(CO)  
CS/19/08/2021