



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 29TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISHKUMAR

O.P.No. 427 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of dispute between
Zillion Infraprojects Pvt. Ltd.,
(Formerly known as Durha
Construction Private Limited) &
Bharat Heavy Electrical Limited in
LOI No: LOI : BHEL: PSSR:SCT:
1248 dated 06.11.2007.

M/s.Zillion Infraprojects Pvt. Ltd.,
(formerly known as Durha Constructions Private Limited)
5th Floor, Anushka Shopping Mall,
Plot No.2, Garg Trade Centre,
Sector-11, Rohini, New Delhi – 110 085,
Through Authorised Representative

... Petitioner

Vs.

Bharat Heavy Electricals Limited
Power Sector Southern Region
Tek-Towers, No.11, Old Mahabalipuram Road,
Okkiyam, Thoraipakkam,
Chennai – 600 097 (Tamil Nadu)

... Respondent

Original Petition praying that this Hon'ble Court be pleased to appoint
an Arbitrator to hear and decide the disputes between the parties arising out



This Original Petition coming on this day before this court for hearing in the presence of Mr.S.Vijayakumar, Advocates for the Petitioner herein and Mr.Chethan Sagar, Advocate for the respondent herein and upon reading the petition and the counter affidavit of G.Murali, filed herein, it is ordered as follows:-

That The Hon'ble Mr. Justice P.Jyothimani, Former Judge, Madras High Court, residing at No.81, Kandaswamy Nagar, 5th Street, 1st Floor, Kamarajar Salai, Palavakkam, Chennai – 600 041, be and is hereby appointed as Arbitrator to enter reference in this matter.

2. That the learned Arbitrator appointed herein, shall, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

3. That the learned Sole Arbitrator appointed herein shall be paid fees and incidental charges fixed by him and the same shall be borne by the parties equally.

4. That the respondent herein shall be at liberty to raise the issue of limitation before the learned Arbitrator and the learned Arbitrator shall



decide the same on its own merits.

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5. That both parties hereto shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
29th DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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09.08.2021

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O.P.No. 427 of 2021

ORDER:-

DATED: 29.07.2021

THE HON'BLE MR. JUSTICE

N.SATHISHKUMAR

FOR APPROVAL: 11.08.2021

APPROVED ON : 12.08.2021

Copy to:-

The Hon'ble Mr. Justice P.Jyothimani,
Former Judge,
Madras High Court,
Sole Arbitrator
residing at No.81,
Kandaswamy Nagar, 5th Street,
1st Floor, Kamarajar Salai,
Palavakkam, Chennai – 600 041.

with covering letter



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**O.P.No.427 of 2021**

M/s.Zillion Infraprojects Pvt. Ltd.,
(formerly known as Durha Constructions Private Limited)
5th Floor, Anushka Shopping Mall,
Plot No.2, Garg Trade Centre,
Sector-11, Rohini, New Delhi – 110 085,
Through Authorised Representative ... Petitioner

Vs.

Bharat Heavy Electricals Limited
Power Sector Southern Region
Tek-Towers, No.11, Old Mahabalipuram Road,
Okkiyam, Thoraipakkam,
Chennai – 600 097 (Tamil Nadu) ... Respondent

Prayer: Original Petition filed under Section 11(4) and (6) of the Arbitration & Conciliation Act, 1996,

a) to appoint an Arbitrator to hear and decide the disputes between the parties arising out of LOI:No.BHEL:PSSR:SCT:1248 dated 06.11.2007.

b) to direct the respondent to pay costs.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.Chethan Sagar



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ORDER

This Original Petition has been filed by the petitioner for appointment of an Arbitrator to hear and decide the disputes said to have raised between the parties, arising out of LOI dated 06.11.2007.

2.The brief facts leading to the filing of this Original Petition are as follows :

2.1.The petitioner, being a construction company, entered into a work contract with the respondent. The LOI dated 06.11.2007 stipulates the time for completion as eight months from the date of initiation of the work. The petitioner initiated the work in September, 2007, and as per the terms of the contract, the completion date of project was 05.07.2008. However, the work was completed by the petitioner on 30.09.2010, i.e., after a delay of 817 days.

2.2.It is the case of the petitioner that the delay is completely attributable to the respondent and due to the extraordinary delay of 817 days, the petitioner had to spend extra money on keeping its resources at site all through till the completion of the project. Therefore, the petitioner raised several running bills to the respondent, seeking payment of outstanding, reimbursement and cost of delay due to the causes attributable to the respondent, however, the respondent did not release the pending payments to the petitioner on various pretexts. Ultimately, the respondent



had rejected the claims of the petitioner, aggrieved by which, the petitioner has decided to refer the matter for Arbitration and sent a notice to the respondent calling upon them to nominate an Arbitrator, by invoking Clause 2.14 of the General Conditions of Contract. However, the respondent had not acted upon the same.

2.3. Due to the inaction on the part of the respondent, the present Original Petition has been filed before this Court for appointment of an Arbitrator.

3. It is the contention of the learned counsel for the petitioner that, even the letter of the respondent, dated 29.09.2016, indicates that the full bill amount has not been paid. Though the work was completed with a delay, the respondent has agreed to pay the amount, however, they have not paid the amount so far, and in the meanwhile, the Bank Guarantee of the petitioner was also released by the respondent on 29.06.2016. The learned counsel further submitted that, thereafter, proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC), were initiated against the petitioner in the year 2018, i.e., on 01.06.2018, and Committee of Creditors was formed and they have now authorised the petitioner to refer the matter for Arbitration.

4. Per contra, the main contention of the learned counsel for the respondent is that, final invoice was issued on 10.12.2014, and No Claim



Certificate was also issued on 12.08.2015. Therefore, any claim for damages at this length of time, is hopelessly barred by limitation. The learned counsel further submitted that, Annexure-A to the letter dated 29.06.2016, viz., Project wise status with reference to various claims of M/s.Zillion (letter dated 12.09.2016) indicates that, no other payments were claimed by the petitioner except the outstanding payment, therefore, now, the petitioner cannot make any claim for damages, which is completely barred by limitation.

5.This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

6.A perusal of the letter, dated 29.09.2016, issued by the respondent, indicates that, as on 24.09.2016, an outstanding amount of Rs.82 Lakhs has been admitted to be released by the respondent. It is not in dispute that, in the meanwhile, proceedings under IBC were also initiated against the petitioner on 01.06.2018. Even after that, there appears to be correspondences between the parties. In such view of the matter, this Court cannot deal with the issue of limitation and decide as to whether the claim of the petitioner is hopelessly barred by limitation or otherwise, in this petition under Section 11 of the Arbitration & Conciliation Act, 1996 (“the Act” for brevity), since it requires evidence and involves facts and law, in



matter requires to be probed thoroughly. In such view of the matter, this Court is of the opinion that, such issues can be raised and decided by the learned Arbitrator under Section 16 of the Act itself.

7. Therefore, this Court is inclined to appoint an Arbitrator to enter reference in the matter, and accordingly, this Court passes the following order :

- i. The Hon'ble Mr.P.Jyothimani (Retd.), Former Judge, Madras High Court, residing at No.81, Kandaswamy Nagar, 5th Street, 1st Floor, Kamarajar Salai, Palavakkam, Chennai – 600 041, is appointed as Arbitrator to enter reference in this matter;
- ii. the learned Arbitrator appointed herein, shall, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order;
- iii. the learned Sole Arbitrator appointed herein shall be paid fees and incidental charges fixed by him and the same shall be borne by the parties equally;
- iv. the respondent is at liberty to raise the issue of limitation before the learned Arbitrator and the learned Arbitrator shall decide the same on its own merits.



WEB COPY This Original Petition is ordered accordingly, leaving the parties to bear their own costs.

Sd./-(N.S.K.J.,)
29.07.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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