

O.P.No. 526 of 2020**P.T.ASHA, J.**

The application has been filed invoking the provisions of Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to decide the dispute between the petitioner and the respondent in accordance with Clause 1 & 2 of the LOI dated 15.03.2017.

2. It is the case of the petitioner that the petitioner who is engaged in the business of executing balance of plant packages of power plants on EPC basis and is engaged in various turnkey project. The petitioner who had undertaken a project with M/s. Benzfab Technologies Private Limited, at TANDA, Uttar Pradesh, had issued a Letter of Intent on the respondent for generator skidding director of positioning of HP and LP Condenser of Unit 1 and Unit 2 of 2X660 MW TANDA STPP, Tanda, Uttar Pradesh. The LOI specifies the scope of work and contains an arbitration clause, in and by which, the parties agreed to resolve the dispute through arbitration.

3. The respondent had executed the project and raised various invoices and ultimately claimed a sum of Rs.47,68,143/- which was a sum of Rs.6,75,317/- towards principal issued under the various invoices and

Rs.40,92,826/- towards interest.

4. The petitioner would contend that the respondent undertook to complete the work both the HP and LP of Unit 1 and Unit 2 and had unfortunately not even started the work with reference to Unit 2 and the petitioner had to engage the services of third parties. As a result, amounts were due and payable by the respondent to the petitioner. The respondent had also moved the NCLT raising a claim with reference to the above sum of Rs.47,68,143/-. Since the dispute has arisen between the parties, the petitioner had requested the respondent to submit themselves for arbitration and had also named an Arbitrator and sought the consent of the respondent. However, by their reply dated 25.02.2020, not only the did the respondent turn down the petitioner's request, but had also contended that there was no dispute.

5. A counter has been filed on behalf of the respondent, wherein they have once again reiterated their contention that there is no dispute between the parties. They would reiterate that the parties had entered into an understanding in and by which, the petitioner had undertaken to pay a sum of Rs.22,00,000/- only to the respondent. The respondent would

submit that they have not received any payment from the petitioner. There is only default in payment of money and not a dispute.

6. Heard the learned counsels on either side.

7. Admittedly, the respondent had raised a claim for a sum of Rs.47,68,143/- before the NCLT. This amount has been refuted by the petitioner. That apart, it is the specific case of the petitioner that the respondent had abandoned the amount with reference to Unit 2, on account of which, the petitioner had to engage the services of third parties. In this regard, the petitioner has submitted that they had incurred additional costs. Therefore, it is clear that there is dispute between the parties with reference to the amount payable and each has a claim against the other. Therefore, the contention of the respondent that there is no dispute, is not sustainable. The agreement between the parties is to refer the dispute for arbitration. Therefore, I appoint Mr.Arun Anbumani, Advocate, Old No.59, New No.17, Ayyavoo Street, Shenoy Nagar, Chennai - 600 030 as Arbitrator.

8. Accordingly, it is ordered as follows:-

(i) Mr.Arun Anbumani, Advocate, Old No.59, New No.17, Ayyavoo Street, Shenoy Nagar, Chennai - 600 030, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator may, 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 the order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

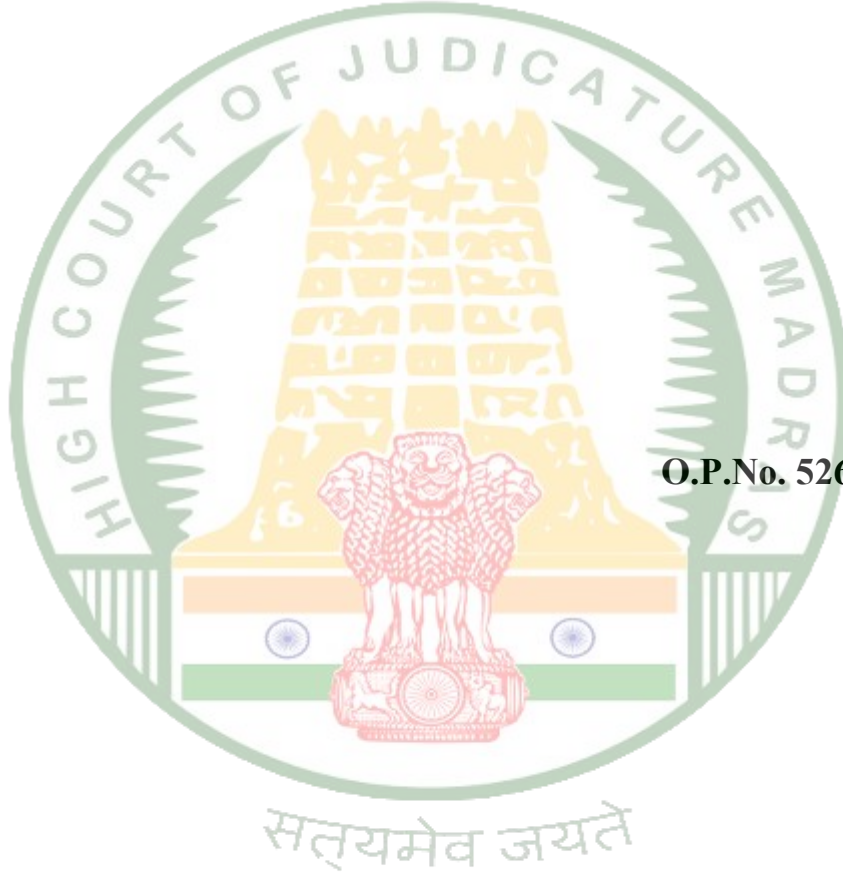
9. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

17.02.2021

msm

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msm



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