

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 04TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

ARB .O.P(COM.DIV.) No.123 of 2022

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of an Arbitration
agreement dated 13.03.2012

M/S.COASTAL PROJECTS LIMITED,
REP.BY ITS OFFICIAL LIQUIDATOR,
Mr.Ravishankar Devarakonda,
No.3072, 14th Cross, K.R.Road,
Shastri Nagar, BSK II Stage,
Bangalore - 560 095

..Petitioner

BHARAT HEAVY ELECTRICALS LIMITED,
REPRESENTED BY ITS ADDITIONAL GENERAL
MANAGER/CONTRACTS,
Power Sector-Southern Region,
EVR Periyar Building,690,
Anna Salai, Nandanam,
Chennai – 35

..Respondent

Arbitration Original Petition (Commercial Division) praying that
this Hon'ble court be pleased:

i) To appoint an Arbitrator to adjudicate the disputes between the
Petitioner and the Respondent in terms of Clause 2.21.1 of the General

Conditions of Contract forming part of the Letter of Intent (LOI) dated 20.04.2012.

b) Direct the Respondent to pay costs.

This Arbitration Original Petition (Commercial Division) coming on this day before this court for hearing the court made the following order:

Mr.S.Kamalakannan, learned counsel representing the counsel on record for sole petitioner is before this Section 11 Court.

2. 'Bharat Heavy Electricals Limited, Nandanam, Chennai' is the lone respondent in captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] and this lone respondent shall hereinafter be referred to as 'BHEL' in this order for the sake of convenience and clarity.

3. Captioned Arb OP has been presented in this Court under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

4. Learned counsel for petitioner submits that the captioned Arb OP has been filed with a prayer for appointment of an Arbitrator qua two letters of intent dated 13.03.2012 and 20.04.2012 read with General Conditions of Contract [GCC] for 'civil and structural steel work for Package 2 (consisting of civil including architectural work for Boiler, ESP, Power House, TG, Mill bay and other main plant buildings and foundations, super structure work and fabrication and erection of structural work for Power House, Mill Bunker Bay and other buildings as per scope and other allied works for Unit-2 and common works like pipe & cable rack, DM plant, DG building, service building, compressor house etc.,) for 2 x 800 MW at Yeramarus Thermal Power Station, Yeramarus, Raichur District, Karnataka' [hereinafter 'said work' for the sake of convenience and clarity].

5. Learned counsel draws the attention of this Court to clause 2.21 of GCC captioned 'ARBITRATION AND RECONCILIATION' which reads as follows:

'2.21 ARBITRATION AND RECONCILIATION'

2.21.1 In case amicable settlement is not reached in the event of any dispute or difference arising out of the execution of the contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Contractor in any manner touching upon the contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for

therein) be referred to the sole arbitration of the arbitrator appointed by BHEL/Incharge (Region).

The award of the Arbitrator shall be binding upon the parties to the dispute.

subject as aforesaid, the provisions of Arbitration and Reconciliation Act 1996 (India) or statutory modifications or re enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine.

2.21.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

2.21.3 The cost of arbitration shall be borne equally by the parties.

2.21.4 Work under the contract shall be continued during the arbitration proceedings.'

6. Both the aforementioned letters of intent dated 13.03.2012 and 20.04.2012 have been issued in Chennai which makes Venue and Seat as 'Chennai' and therefore, this is the jurisdictional Court is learned counsel's say.

7. Arbitrable disputes arose leading to exchange of notices followed by a trigger notice dated 06.09.2021 to which BHEL responded by letter dated 09.11.2021 saying that the trigger notice having been issued by Official Liquidator should be backed an order from National Company Law Tribunal [NCLT], as order of NCLT dated 02.12.2021 in IA(IB) No.119/CB/2021 in TP No.255/CTB/2019 [earlier CP(IB) No.593/KB/2017] was sent to BHEL receipt of which has been acknowledged by BHEL vide letter dated 05.01.2022 but there has been no response to the request for invocation of arbitration agreement necessitating the presentation of captioned Arb OP is learned counsel's further say.

6. Owing to/in the light of narrative thus far (supra) *prima facie* case for issue of notice made out.

7. Issue notice to respondent returnable in a fortnight i.e., returnable by 18.04.2022. Private notice permitted. Learned counsel for

petitioner is also permitted to serve on learned standing counsel for BHEL
(if any in this Court).

8. List on 18.04.2022.

Sd/.M.S.J.
04.04.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU./08.04.2022

COURT OFFICER(O.S.)

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