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Arb.O.P.(Comm.Div.) No.252 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.252 of 2021

M/s. Composit Consultants (P) Limited,
No.113, Janpura Extension,
New Delhi-110 04 represented by its
Director Mr.Amitabh Sood

.. Petitioner

vs.

The Government of India,
Office of the Chief Engineer (SZ) I,
Central Public Work Department,
“G” Wing, II Floor, Rajaji Bhavan, III Avenue,
Besant Nagar, Chennai-600 090.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, prayed to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent, in terms of the agreement No.31/SE/CCD-II/2011-12 and direct the respondent to pay costs.

For Petitioner : Mr.S.Suresh
For Respondent : Mr.A.R.Sakthivel, CGSC

ORDER

Pursuant to a tender floated by the respondent, a work order was issued to the petitioner for construction of an administrative building for the



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Indian Maritime University at Uthandi, Chennai and development of the site by providing sewage treatment plant of 200 KLD capacity with MBBR/FBBR system. After issuing notice dated 14.10.2019 under clause 25 of the General Conditions of Contract, the present petition is filed in view of the refusal of the respondent to co-operate in the constitution of an arbitral tribunal.

2. Learned counsel for the petitioner submits that certain claims which arose out of the execution of work under the work order were previously referred to arbitration and that such arbitral proceedings culminated in the award dated 10.10.2018. However, it is submitted that the final bill was submitted only in the year 2019, as evidenced by the request letter dated 03.05.2019 and the subsequent communication of 26.09.2019. Therefore, learned counsel for the petitioner contends that the claims raised in the Section 21 notice dated 14.10.2019 are distinct from the claims previously adjudicated in the arbitral award dated 10.10.2018.

3. The request for the constitution of an arbitral tribunal is contested by the respondent primarily on the ground that the entire dispute arising out of the work order issued to the petitioner was resolved through the arbitral



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award dated 10.10.2018. By drawing reference to the communication dated 21.01.2019 from the respondent to the petitioner, learned counsel submitted that the work was completed in October 2012, which is earlier to the previous arbitration, and that all payments were made to the petitioner pursuant to the arbitral award. He also points out that the request for arbitration was rejected by communication dated 22.01.2020 on that ground. Without prejudice to the above contention, learned counsel for the respondent submitted a list of proposed engineer arbitrators. Learned counsel for the petitioner, on instructions, is agreeable to the appointment of any one of these proposed arbitrators.

4. There is no dispute between the parties that the contract between them contains an arbitration clause. The respondent opposes the request for arbitration largely on the basis that the entire dispute between the parties was adjudicated in the first round of arbitration. This contention is refuted by the petitioner by pointing out that the final bill came to be issued only in 2019 and by asserting that the claims contained in the Section 21 notice dated 14.10.2019 are distinct from the claims adjudicated earlier. In order to decide whether there is any duplication of claims or cause of action, the matter would have to be examined in considerable detail and depth. Such



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exercise is outside the limited scope of Section 11 of the Arbitration and Conciliation Act 1996. As held in *Vidya Drolia and Others v. Durga Trading Corporation (2021) 2 SCC 1* and subsequent judgments, reference to arbitration should be declined only in limited circumstances such as where there is no arbitration clause/arbitration agreement or the dispute is manifestly non-arbitrable or *ex facie* barred by limitation. The present dispute does not fall within those limited categories.

5. Accordingly, Arb. O.P.(Com. Div.) N.252 of 2021 is allowed by appointing Mr.K.Srinivasan, residing at C 2, Block-1, Mayfair Apartment, LIC Colony Road, Velacherry, Chennai-600 042, Mobile No.9444620305 Email:ksrini00@yahoo.co.in., as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. It is open to the sole arbitrator to fix the fees and expenses for the arbitral proceedings in consultation with the parties.

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Index : Yes / No
Internet : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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