



Arb.O.P.No.19 of 2022

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**KRISHNAN RAMASAMY.J.,**

This petition has been filed under Section 11(4)(a) of the Arbitration and Conciliation Act, 1996, seeking to appoint an arbitrator for adjudicating the dispute arising between the petitioner and respondent in respect to the Agreement Contract No.CNT/SEW/NCB/TIPP/00/3A/2015-16, dated 23.06.2016.

2. The case of the petitioner is that the petitioner had entered into an Agreement with the respondent vide agreement dated 23.06.2016 for the purpose of the work of Design Construction and Commissioning of 54 MLD capacity Sewage Treatment Plant at Sholinganalur based on Sequential Batch Reactor (SBR) technology comprising of SBR Basins & Allied works (18 MLD capacity in Existing Module – I and a 36 MLD capacity STP with Power generation Module – II) on DBO basis including O & M for 10 years. According to the petitioner, as per the agreement, the work was awarded to the petitioner vide Contract No.CNT/SEW/NCB/TIPP/00/3A/2015-16, dated 23.06.2016, at a cost of Rs.134.44 crores which includes Rs.68.70 crores



towards construction cost and Rs.65.74 crores towards Operations and Maintenance of the project for 10 years. The work was commenced on 11.07.2021 and 90% of all the works were completed by the petitioner, while so the respondent has paid a sum of Rs.59,87,15,090/- till date for the construction works completed, however there is an unbilled amount of Rs.8,82,87,209/- towards the construction works and the respondent has failed to pay the same. Further, according to the petitioner, currently there is an outstanding bill amount of Rs.57,85,352/- payable by the respondent to the petitioner vide RA. Bill No.CHN/22-23/27, dated 11.04.2022. Even after repeated reminders viz., letters dated 28.10.2021, 26.10.2021 and 27.04.2022, the respondent has failed to respond to the same. He also issued notice for appointment of Arbitrator on 22.11.2021 and suggested one Mr.N.Umapathi as Arbitrator. However, after receipt of the letter respondent has not agreed for the same. Therefore, the present petition has been filed to appoint the respondent side Arbitrator.

3. The learned counsel appearing for the respondent would fairly submit that Arbitrators as per the arbitration Clause, may be appointed to



resolve the dispute between the parties. However, this Court suggested for appointment of sole Arbitrator in the matter instead of three arbitrators, for which, both the counsel have fairly agreed for the same.

4. Heard the submissions made by the learned counsels appearing for both the parties.

5. Clause 3 of the Agreement, dated 23.06.2016 reads as follows:

*“In case of dispute or difference arising between the employer and contractor relating to any matter arising out of or connected with this agreement such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act 1996. The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the employer and the contractor. The third arbitrator shall be chosen by the two Arbitrators so appointed by the parties shall act as Presiding Arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of Arbitrator appointed subsequently Presiding Arbitrator shall be appointed in accordance with the Arbitration and*



*Conciliation Act 1996.”*

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6. On perusal of the above clause reveals that in case of dispute or difference arising between the employer and contractor relating to any matter arising out of or connected with agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act 1996.

7. Therefore, in view of the submissions made by the learned counsel appearing for the petitioner and respondent and in view of the covenant mentioned above, the present dispute can be adjudicated by the Arbitrator being appointed in terms of Clause – 3 of the Arbitration Agreement dated 23.06.2016.

8. Accordingly, Hon'ble Mr.Justice K.Kalyanasundaram, (Mobile No.9444395699) is appointed as sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award



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preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses.

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

02.09.2022

*Pns*

*(Note: Issue Order Copy on 20.09.2022)*



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*Pns*

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