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Arb. O.P. No. 346 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.346 of 2022

Shilpi Engineering Pvt.Ltd.,
Corporate Office,
D.505, 5th Level, Tower 2,
Seawoods Grand Central,
Sector 40, Nerul(E),
Navi Mumbai-400 706

... Petitioner

Vs.

Chennai Petroleum Corporation Ltd.,
rep. by its Chief General Manager,
Manali, Chennai-600 068.

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying

(i)to pass an order of appointing a sole arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent pursuant to a detailed letter of Acceptance bearing W.O.No.24913328(FC



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No.1042/SC0232/W/020) dated 19.11.2016,

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(ii) and to direct the respondent to pay costs of this petition.

For Petitioner : Mr.P.K.Vasuki for
M/s.Indialaw LLP(Law Firm)

For Respondent : Mr.B.Kishore

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent pursuant to a detailed Letter of Acceptance bearing W.O.No.24913328(FC No.1042/SC0232/W/020) dated 19.11.2016.

2.Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent.

3.Today, when the matter is taken up for hearing, though the respondent filed a detailed counter, he has agreed on the aspect of appointment of arbitrator by this Court.



4. According to the petitioner, the Letter of Acceptance dated 19.11.2016 was executed between the petitioner and the respondent along with terms and conditions. The learned counsel for the petitioner submitted that in terms of the Letter of Acceptance, they have completed the entrusted work. However, the respondent has not paid full amount of final bill, but made certain deductions. Therefore, the applicant has claimed a total a sum of Rs.9,51,04,252/- and in this regard, notice dated 22.04.2021 was issued to the respondent and also reminders, however, as there was no progress, the applicant approached this Court, seeking for appointment of a sole Arbitrator.

5. The learned counsel appearing for the respondent would submit in terms of Clause 12.2 of General Conditions of Contract (GCC), they have considered three names of arbitrators for appointment as sole arbitrator and requested the applicant to select one person, but the applicant has not chosen any of the given names as sole arbitrator and without furnishing the name of the sole arbitrator to be appointed, the applicant approached this Court for appointment of Arbitrator.



6. Heard the learned counsel appearing for the parties and perused the records.

7. It is appropriate to extract Clause 12.2 of General Conditions of Contract (GCC) which reads as under:

Clause 12.2: Settlement of disputes with other than PSUs and Govt. Departments:

Any dispute arising out of or relating to this Agreement, or the breach or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (the "Act") by a sole Arbitrator to be appointed by the Managing Director of the Owner in the manner herein below stated. The party requiring that the dispute be referred to arbitration shall do so by a written notification to the other party with a copy to the Managing Director of the Owner Within 30 days of receipt of such notification, the Managing Director of the Owner shall notify to both parties the name and address of three individuals who are not connected with the Owner, for appointment as the sole arbitrator: Within 10 days of receipt of such notification, the Party other than the Owner shall select one out of the three individuals and communicate such person's name to the owner and the Managing Director of the Owner. On receipt of such communication, the Managing Director of the Owner shall forthwith appoint the individual so selected as the sole arbitrator: provided that in the event the Party other than the Owner, refuses or omits to so communicate within the said 10 days, the Managing Director of the Owner shall forthwith appoint anyone out of the three individuals as the sole arbitrator. The arbitration shall be held at Chennai and the arbitration proceedings shall be conducted, and the award shall be rendered, in English. The award shall state the reasons upon which it is based. The arbitrator shall render the award within six months of the commencement of



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arbitral proceedings, which period may be enlarged by consent of both parties. The costs of the arbitration proceedings shall be borne equally by the two parties. Interest, if awarded by the arbitrators, shall be at a rate not exceeding the Cash Credit Rate prevailing on the date of the award. This Agreement, and the rights and obligations of the Parties, shall remain in full force and effect pending the award in any arbitration proceedings. For the purposes of this clause, the term 'dispute shall include a demand or difference of any kind whatsoever, arising out of this Agreement and respecting the performance thereof, whether during the Term of this Agreement including extensions, if any, or after completion, and whether before or after termination, abandonment or breach of the Agreement'.

8. On a perusal of the above, it is clear that any dispute arising out of contract/agreement between the parties, the matter can be adjudicated and settled by an arbitrator.

9. Though there is no certainty in choosing the name of the Arbitrator out of three names suggested by the respondent, however, now both parties agreed for appointment of the sole arbitrator, this Court feels it appropriate to pass the following order:

i) Hon'ble Mr. Justice K. Kalyana Sundaram (Rtd.),
residing at Flat No. 406, 5th South Cross Street, Kapaleaswarar
Nagar, Neelankarai, Chennai, Contact No. 93810 11077
is appointed as sole arbitrator to enter upon reference and



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KRISHNAN RAMASAMY, J.

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adjudicate the disputes *inter se* the parties.

ii) 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 the Order.

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

10. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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