

HON'BLE SRI JUSTICE K. LAKSHMAN

ARBITRATION APPLICATION No.78 of 2022

ORDER:

Heard Sri Muddu Vijai, learned counsel for the petitioner and Sri K.Giridhar Raju, learned counsel appearing for respondent.

2. This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of an Agreement of Contract for construction dated 24.07.2017.

3. Perusal of the record would reveal that petitioner and respondent have entered into an Agreement of Contract for Construction (hereinafter 'the agreement') dated 24.07.2017 on the specific terms and conditions mentioned therein. Clause (4) of the said agreement deals with appointment of an arbitrator and the same is re-produced here under:

"4. That in case of any dispute arises the panel of two arbitrators will be appointed each from owner and contractor to settle down the issue. The decision of such arbitrator shall bind on both the parties.

4. Thereafter, disputes arose between the parties regarding the execution of the agreement and the same constituted arbitral

disputes. Therefore, petitioner herein had invoked the aforesaid clause by issuing an arbitration notice dated 11.12.2019 and proposed Mr.M.A.Qayyum as an arbitrator but the same was not accepted by the respondent. *Vide* letter dated 25.02.2022 the said Mr.M.A.Qayyum withdrew from the proceedings as arbitrator. Therefore, petitioner herein had filed present application seeking appointment of an arbitrator. However, respondent has not filed counter and he is not seriously disputing about the execution of the agreement and existence of arbitral disputes.

5. This Court is inclined to allow the Arbitration Application. A perusal of Clause 4 of the agreement reveals that the arbitration clause provides that both the parties can appoint their respective arbitrators. However, the said clause does not contemplate the appointment of third arbitrator. Therefore, the said Clause in its current form is unworkable in light of Section 10 of the Act, 1996. The said provision is extracted below:

10. Number of arbitrators.—(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

Section 10 of the Act, 1996 provides that the number of arbitrators in a tribunal shall not be an even number. In case the number of arbitrators are even in number, the Court shall appoint a sole arbitrator. In *North East Securities Limited, Hyd. v. Sri Nageswara Chemicals and Drugs Pvt., Ltd., Hyd.*¹, dealing with a similar situation, this Court held as follows:

11. From the afore going discussion, it would be clear that an arbitration agreement, which provides for appointment of even number of Arbitrators, as in the present case, will not be invalid on that count. It, therefore, follows that in such cases only that part of the arbitration agreement, which provides for appointment of even number of Arbitrators will be invalid and/or inoperative. The arbitration agreement in such cases shall remain to be construed as a simple arbitration agreement where the parties have failed to determine the number of Arbitrators. Sub-section (2) of Section 10 of the New Act will then be attracted and the Arbitral Tribunal has to be constituted by appointing a sole Arbitrator.

12. This is, precisely, the situation in this case and, therefore, a sole Arbitrator has to be appointed. It may be noted here that unlike the arbitration agreement in the case of *M.M.T.C. Limited* (supra), the arbitration clause in this case does not provide that the two Arbitrators appointed by the parties shall appoint an Umpire before proceeding with the reference. Hence, sub-sections (3) and (4) of Section 11 of the New Act are not

¹ 2000 SCC OnLine AP 499

attracted. In this view of the matter also, a sole Arbitrator has to be appointed to resolve the dispute between the parties. It may also be recorded here that this is the request of the Counsel for the applicant-Sri V. *Ravinder Rao*, who argued the case with great ability and precision.

Therefore, the present arbitration application is allowed and Sri T.Muralidhar (Retired District Judge) is appointed as the sole arbitrator to decide the arbitral disputes between the petitioner and respondent. Liberty is granted to the respondent to submit his claim and raise all the contentions before the arbitrator. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

K. LAKSHMAN, J

December 20, 2022
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