

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

ARBITRATION APPLICATION No.111 OF 2022

ORDER : (ORAL)

Heard Mr. Y. Sai Sankalp, learned counsel for the applicant, and perused the material on record.

2. Despite service of notice, none appears for the respondent.

3. This application is filed seeking appointment of an independent sole Arbitrator to adjudicate the dispute between applicant and respondent.

4. The respondent issued work order *vide* Ref:NPPL/ARUCHEM-CHEMICAL CLEANING/17-18/WO/018 dated 10.02.2018 to the applicant for “Low Temperature EDTA chemical cleaning of 1 X 150 MW Boiler and Alkali Flushing of Preboiler system, chemical cleaning of reheater by citric acid method which includes consumables, tools, equipments and manpower required for the scope of completion of job at 1 X 150 MW Nagai Power Pvt Ltd, Okkur village, Nagapattinam District, Tamilnadu”. Clause No.7 of the work order provides for settlement of disputes through arbitration. It is the case of the applicant that having executed works of the respondent, on 27.03.2018 the applicant has raised an invoice for an amount of Rs.29,73,600/-, out of which only a sum of

Rs.28,92,400/- was paid by the respondent. Subsequently, on 24.05.2018, second invoice was raised for a sum of Rs.22,30,200/-, out of which only a sum of Rs. 14,74,485/- was paid by the respondent. Further, on 16.10.2018, third invoice was raised against the respondent for a sum of Rs.22,30,200/-, for which no payment whatsoever was made by the respondent. The respondent has paid part payments only and was still due of a sum of Rs. 30,67,115/- to the applicant for the work done. In spite of several correspondences through e-mail, telephone and whatsapp, the respondent failed to clear the dues. Hence, legal notice dated 17.11.2021 was issued by the applicant to the respondent calling upon to clear the dues along with interest, however, the respondent did not choose to reply for the same. Thus, the applicant was constrained to issue notice dated 24.01.2022 invoking Clause - 7 of the Work Order for settling the disputes through arbitration. Having received the notice, respondent has issued reply dated 10.02.2022 denying the averments made by the applicant. The respondent though admitted issuance of work order dated 10.02.2018, denied payments due to the applicant by citing petty reasons, such as, defective work and not in accordance with the mandated stipulations and requirements. As there were disputes which were to be referred to the arbitrator and the respondent did not give any consent for appointment of arbitrator nominated by the applicant, instant application is filed.

5. Even after service of notice vide memo USR No.67717 of 2022 on 06.09.2022, there is no appearance on behalf of respondent. As per the work order, in terms of Clause No.7, the applicant has invoked arbitration clause and called upon the respondent to give consent for the proposed arbitration vide notice dated 24.01.2022. The respondent though issued reply on 10.02.2022, did not give consent for appointment of arbitrator nominated by the applicant. There are disputes existing between the petitioner and the applicant. In as much as the applicant has duly invoked the arbitration clause by issuing notice dated 24.01.2022 and as there is no contest, this arbitration application is allowed, unopposed.

6. Accordingly, Mr. R. Damodar, Retired District Judge, Flat No.204, H.No.1-13-1/2/1/A, MNR Sripadham, Plot No.1, Block No.13, Alkapuri Colony, Saroornagar, Ranga Reddy District – 500035 is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent and the learned Arbitrator shall enter on reference and proceed with, as enjoined by the Arbitration Act.

7. The learned Arbitrator is entitled to fees as per the rates specified in the Schedule - IV to Arbitration Act, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal shares.

As a sequel thereto, miscellaneous applications, if any, pending in this arbitration application shall stand closed.

December 30, 2022.
PSW

B. VIJAYSEN REDDY, J

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