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ARB. O.P.(Com. Div) No.54 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.54 of 2023

Extraco Composites India Private Limited,
having CIN U25209TN2006PTC061025,
Registered office at 2nd Floor,
995-P Diamond Plaza,
12th Main Road, Anna Nagar,
Chennai 600 040

...

Petitioner

vs.

BGR Energy Systems Limited
(CIN : L40106AP1985PLC005318)
Having Registered Office at
Plot No A5, Pannamgadu Industrial Estate,
Ramapuram Post.
Sullurpet Taluk, Nellore District,
Andhra Pradesh 524 401.
Having Branch Office at
EED Factory - Panjetty Village,
Ponneri Taluk, Thiruvallur District. ...

Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to decide and adjudicate upon the dispute between the petitioner and the respondent and to recover a sum of Rs.1,01,98,390/- together with corresponding interest at the rate of 18% per annum from the date of this petition and b) for the cost of the petition;



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For petitioner	: Ms. S. Meenakshi
For respondent	: Mr. C. Prasanth Gopal

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator.

2. There seems to be a dispute between the petitioner and the respondent arising out of Purchase and Service Orders placed between 19.02.2019 and 04.07.2019. The petitioner claims that they have manufactured and have installed certain equipments at the project sites of the respondent, based on the Purchase and Service Orders placed by the respondent. According to the petitioner certain sums of money are due and payable to them by the respondent. The petitioner has sent a lawyer's notice, prior to the invocation of arbitration, demanding the payment of the outstanding amounts from the respondent. Since the demands have not been met, the petitioner has invoked the arbitration in accordance with the arbitration clause contained in the Purchase and Service Orders through its notice dated 05.01.2023. The arbitration invocation has also been



received by the respondent. Since, there was no consensus with regard to the name of the arbitrator despite sending the arbitration invocation notice, dated 05.01.2023, this petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator.

3. A counter affidavit has been filed by the respondent stating that a simultaneous application has been filed by the petitioner before the MSME council seeking for resolution of the dispute between the petitioner and the respondent and therefore, the present petition is not maintainable. They have also disputed the liability of the respondent to the petitioner as claimed by the petitioner in this Section 11 application. They have also raised the issue of limitation as according to them the claim of the petitioner is barred by limitation.

4. The learned counsel for the petitioner with regard to the plea of limitation taken by the respondent would submit that the last part payment made by the respondent to the petitioner was on 31.03.2020 and therefore, the present petition filed under Section 11 is well within the period of limitation. No documents have also been produced by the respondent in



WEB COPY this application with regard to their claim that the petitioner's claim is barred by limitation. On the other hand, the learned counsel for the petitioner has filed the computer generated statement of account pertaining to the transaction and as seen from the said statement of account, the respondent seems to have made the last part payment on 31.03.2020.

5. This Court in a Section 11 application will have to take only a prima facie view as to whether there is a valid arbitration agreement or not between the parties and as to whether the claim is filed within the period limitation. The learned counsel for the respondent has also not disputed the existence of an arbitration clause in the Purchase Orders as well as in Service Orders placed by the respondent with the petitioner. They are dated from 19.02.2019 to 04.07.2019. A sample of the said arbitration clause is extracted hereunder :

14. ARBITRATION : *All disputes arising in connection with this agreement /P.O. which cannot be settled by mutual negotiations shall be finally settled under the rules of Indian Arbitration & Conciliation Act, 1996 and as amended from time to time. The venue of the arbitration shall be Chennai.*



6. Insofar as the parallel application filed by the petitioner before the MSME Council under the Samadhaan Scheme seeking for resolution of the dispute between the petitioner and the respondent is concerned, the learned counsel for the petitioner on instructions has made an endorsement in the Court bundle agreeing to withdraw the said application. The said endorsement is recorded by this Court. Since, on a prima facie consideration, the arbitration proceedings seems to have been initiated within the limitation period and there is a valid arbitration agreement between the petitioner and the respondent arising out of the Purchase Orders and Service Orders placed by the respondent between 19.02.2019 and 04.07.2019 and since there has been no consensus with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 after recording the undertaking given by the petitioner that they shall not prosecute their application submitted before the MSME Council under the Samadhaan Scheme for resolution of the dispute between the petitioner and the respondent.

7. For the foregoing reasons, this petition is allowed as prayed for by



appointing Mr.S. Baskaran, District Judge (Retd.) as the Sole Arbitrator to

decide the dispute between the petitioner and the respondent arising out of the Purchase and Service Orders from 19.02.2019 and 04.07.2019.

a) Accordingly, this Court appoints Mr.S. Baskaran, District Judge (Retd.), who is having office at A1/7, SAF Games Village, Koyambedu, Chennai (Mobile No.9443569226) as a sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the Purchase and Service Orders from 19.02.2019 and 04.07.2019.

b) The sole Arbitrator appointed shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

c) Both the parties shall equally share the Arbitrator's fees payable to the sole Arbitrator.

d) The Arbitrator shall conduct the Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the Arbitration by passing an Arbitral Award, within the stipulated time as fixed under the Arbitration and Conciliation Act, 1996.



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e). The petitioner is directed to send a copy of this order to the MSME Council informing them that she is not pressing the application filed by the petitioner on 01.11.2022 seeking for resolution of the dispute with the respondent under the Samadhaan Scheme and the said Council is directed to act accordingly.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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