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Arb.O.P(Com.Div.)Nos.399, 400 & 401 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.399, 400 and 401 of 2023

M/s.Tamilnadu Water Investment Company Limited,
Represented herein by its Authorised Signatory,
'Polyhose Towers'
No.86, Mount Road,
Guindy,
Chennai – 600 032.

... Petitioner in all Original Petitions

Vs.

M/s.Periyapalayem Common Effluent
Treatment Plant Private Limited,
S.F.No.:224/2, A.Periyapalayam,
Uthululi Road,
Tirupur – 641 607.

... Respondent in all Original Petitions

Common Prayer: Original Petitions are filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint its Arbitrator within the period mandated under Section 11 of the said Act to adjudicate the disputes/claims between the Applicant and the Respondent that has arisen under the said Agreements entered into by an between the parties herein and to direct the respondent to pay to the petitioner the costs of this proceeding.



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For Petitioner
(in all O.Ps)

: Mr.J.V.Sakthi Balakrishnan
for M/s.R.Sahana

For Respondent
(in all O.Ps)

: Ms.V.Sangamithra
for M/s.Genicom and Associates

COMMON ORDER

By this common order, all these Arbitration Original Petitions are being disposed of.

2. These petitions have been filed by the petitioner for appointing an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

3. After notice was ordered, Mr.K.Balaganesh, Advocate for M/s.Genicon Associates entered appearance on 22.09.2023. Thereafter, no steps have been taken by the respondent to file a counter.

4. The dispute between the petitioner and the respondent is arbitrable in terms of the Project Management Agreement dated 22.08.2012 and Operation and Supervision Agreement dated 23.08.2013 and Maintenance and Repair Agreement dated 23.08.2013. Both the Project Management Agreement dated 22.08.2012 and Operation and Supervision Agreement dated 23.08.2013



contemplate a Clause for resolution of dispute through Arbitration. They read

as under:-

“a) The Project Management Agreement dated 22.08.2012:

19.Arbitration:

(a)It is hereby agreed between the parties that the Project shall be executed in the manner and form outlined in this Agreement. If any difference or dispute of any kind whatsoever arises between the Parties in connection with or arising out of or relating to or under this Agreement, the Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30)days from the date on which the above mentioned dispute or difference arose, such dispute or difference shall be referred to a panel of arbitrators. **The panel of arbitrators shall consist of three persons. Each party hereto shall appoint one arbitrator and the two arbitrators so appointed shall together appoint the third arbitrator, who shall function as the presiding arbitrator.** The seat of arbitration shall be Chennai and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996, shall govern Arbitral proceedings.

(b)The existence of any dispute or difference or the initiation or continuance of the Arbitral proceedings shall not postpone or delay the performance by the parties of their respective obligations under or pursuant to this Agreement. Further, this Agreement shall remain subsisting and operative during the Arbitral proceedings and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

(c)The Courts of Chennai alone shall have jurisdiction with respect to arbitration or any other dispute. ”

b)Maintenance and Repaid Agreement dated 23.08.2013 and c) Operation and Supervision Agreement dated 23.08.2013:



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“33.Dispute Resolution

33.1. In the event of any claim, dispute or difference whatsoever including but not limited to those pertaining to any breach, default, termination, non-payment of sums of money due hereunder or the invalidity of any terms hereof arising out of or under or concerning or in relation to this Agreement (the Dispute), the same shall, in the first instance, after notice in this regard is sent to the other party with specific reference to this Clause, be attempted to be resolved by a Committee consisting of 2 Senior Management Personnel, one from each of the Parties, preferably a Director of each of the parties.

33.2. Should the said Committee be unable to resolve the dispute, then the same shall be resolved by arbitration in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996 (the said Act) **by an Arbitral Tribunal which shall consist of 3 Arbitrators, with each party nominating one Arbitrator and the said two Arbitrators nominating the Presiding Arbitrator. The Arbitral Proceedings shall be conducted in the English and its seat shall be at Chennai.**

33.3. Notwithstanding the existence of a dispute, the parties shall continue to perform their respective obligations under this Agreement during the pendency of either the Settlement Dispute or during the Arbitral Proceedings. No payment that is due or is payable by one party to the other shall be withheld on account of the pendency of either the arbitral proceeding or the dispute resolution mechanism except that part of the payment which is in dispute.

33.4. Notwithstanding anything to the contrary contained in this Clause, any Dispute pertaining to Schedule 5 shall be resolved in the manner as set-out therein.

33.5. Should either one of the parties refuse or neglect to nominate an Arbitrator or furnish the Arbitrator(s) with any papers/documents or information as may be requested/required, the Arbitrator(s) shall be appointed in the manner as provided under the provisions contained in the



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said Act and shall upon such appointment be entitled to proceed exparte.

33.6. The costs of the Arbitration proceedings shall be borne equally by the parties. Each party shall bear their respective costs in prosecuting or defending a claim; provided that if the Arbitrator(s) in their sole discretion determine that the stand of the Claimant or respondent was frivolous, substantially devoid of merits, and/or not presented in good faith, or for any other lawful reason the Arbitrator(s) shall have the right to assess the costs of such proceedings and in their discretion direct one of the parties to pay or the entire costs of the proceedings including the Arbitrator(s) Fee as well as the Counsel's Fee.

33.7. Any decision or award of the Arbitral Tribunal shall be final and binding on the parties and the award may be enforced against any asset of the party against whom the award has been passed.

33.8. Injunctive Relief

Notwithstanding anything contained herein above, either party may be initiating appropriate proceedings in the Hon'ble Madras High Court seek interim or provisional relief in the form of a temporary restraining order, interim injunction or any other interim equitable relief pertaining to any dispute that has been referred for Arbitration”.

5. The petitioner had also issued a notice under Section 21 of the Arbitration and Conciliation Act on 01.08.2022, which has also been replied by the learned counsel for the respondent confirming the position that the dispute is arbitrable.



6. The respondent has not filed any counter. The respondent has thus forfeited the rights under the respective agreements to nominate its Arbitrator.

7. The learned counsel for the petitioner submits that the arbitration may be before a sole Arbitrator to be appointed by the High Court under Section 11 of the Arbitration and Conciliation Act, 1996.

8. The Arbitration Clause extracted above contemplates a nomination of two Arbitrator by either of the parties who intturn were to nominate a presiding Arbitrator. Therefore, there cannot be any deviation in the strength and constitution of Arbitral Tribunal unless the petitioner also consents for the same.

9. The petitioner has opted for **Mr.K.K.Balu**, Former Chairman of the Company Law Board as an Arbitrator. The nomination of **Mr.K.K.Balu**, Former Chairman of the Company Law Board as the nominee Arbitrator on behalf of the petitioner stands confirmed.

10. Since the respondent has forfeited the rights under respective agreements to nominate the Arbitrator on its behalf, **Mr.R.SINGARAVELAN**,



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Senior Advocate, (Mobile No.96771 85695) having office at No.4, Kondi

Chetty Street, 2nd Floor, Chennai – 600 001, New Address: No.64/108, 1st

Floor, Catholic Centre, Armenian Street, Chennai – 600 001, is appointed as the nominee Arbitrator on behalf of the respondent.

11. Both the above mentioned Arbitrators shall inturn nominate a **Presiding Arbitrator** and complete the procedure for constitution of an Arbitral Tribunal as is contemplated under the respective agreements.

12. The arbitral Tribunal shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996.

13. The learned Arbitrators appointed shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same



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shall be borne by the parties equally. In case, one of the party remains *ex parte*, or fails to pay the same, it shall be borne by the other party and recover the same from the party failing to pay the same.

14. These Original Petitions are allowed accordingly, leaving the parties to bear their own costs.

15. Since this Court has appointed the Arbitrators, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrators.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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