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Arb.O.P.(Comm.Div.)No.118 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.118 of 2023

Mahavir Transmission Limited,
Rep. by its Sr.Manager – Legal, Mr.Ajay Singh
4510-12, 7/33, Ansari Road, Darya Ganj
New Delhi – 110 002.

...Petitioner

Versus

Larsen & Toubro Limited
(Construction)
PB No.979, Mount-Poonamallee Road,
Manapakkam,
Chennai – 600 089.

...Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator in accordance with Clause 28.2 of the Purchase Order dated 07.03.2022 to adjudicate upon the disputes that have arisen between the parties in connection with the Purchase Order dated 07.03.2022.

For Petitioner : Mr.B.NSuchindran

For Respondent : Ms.R.S.Poornima



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ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator to adjudicate the disputes arisen between the parties in connection with the Purchase Order dated 07.03.2022.

2. The learned counsel for the petitioner submitted that the petitioner is a company carrying on the business of manufacturing of ACSR electrical Conductors. The respondent vide e-mail dated 19.01.2022, placed an order with the petitioner, for purchase of various types of conductors i.e., ACSR Dog, ACSR Panther and ACSR Wolf Conductors under IPDS Jammu Project. Accepting the order placed by the respondent, the petitioner started manufacturing the goods/material in terms of the manufacturing clearance placed by the respondent. While so, the respondent issued the Purchase Order dated 07.03.2022 along with General terms and conditions of Contract for purchasing various types of conductors, to the petitioner. After completing the manufacture of material ordered by the respondent, the petitioner vide Letter dated 11.04.2022, requested the respondent to carry



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out the inspection of the manufactured material. Pursuant to the said letter, on 04.05.2022 & 05.05.2022, the Inspecting Officers appointed by the respondent inspected the material manufactured by the petitioner. Thereafter, the respondent accepted the material manufactured by the petitioner. Hence, the petitioner supplied the entire inspected material to the respondent and duly raised the invoices/bills for a sum of Rs.3,98,36,324/-. However, the respondent failed to release the Price Variation payment amounting to Rs.3,20,86,303/-, within the stipulated time period. Despite the repeated requests of petitioner, the respondent did not release the Price Variation payment amount.

2.1. The learned counsel further submitted that as per Clause Nos.28.1 & 28.2 of the Purchase Order dated 07.03.2022, if any dispute arises between the parties in connection with the said Purchase Order, the same shall be settled by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause Nos.28.1 & 28.2 of the said Purchase Order are extracted hereunder:

“28.1. Amicable Settlement



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If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier, in connection with or arising out of the contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination, or execution, during term of the Contract, and whether before or after the termination, abandonment or breach of the Contract (“Dispute”), the Parties shall seek to resolve the Dispute in good faith by mutual consultation. If the Parties fail to resolve the Dispute by mutual consultation within [30 (thirty)] days after notice of the Dispute by one Party to other Party then the provisions of Clause 28.2 (Arbitration) shall apply.

28.2 Arbitration

If any dispute is not resolved by the Parties pursuant to Clause 28.1 (Amicable Settlement) within [60 (sixty) day] of the notice of the Dispute, then either Party may, within [15 (fifteen)] days of such reference, provide notice to the other Party, of its intention to commence arbitration, as hereinafter provided, as to the matter in Dispute.

Any Dispute, in respect of which a notice of intention to commence arbitration has been provided in accordance with Clause 28.2.1 above, shall be finally settled by arbitration.

Any Dispute submitted by a Party to arbitration shall be heard by a sole arbitrator to be chosen from the panel of arbitrations to be furnished by the Purchaser.

Arbitration proceedings under this Clause 28.2 shall be conducted pursuant to the (Indian) Arbitration and Conciliation Act, 1996 as may be amended, modified, or supplemented from time to time.

The decision of the arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The Parties hereby waive any objections to or claims of immunity from such enforcement.

The venue and seat for the arbitration will be [Chennai, Tamil Nadu] and the language for conduct of the arbitration proceedings shall be English.”



Hence, the petitioner sent a Legal Notice dated 11.11.2022 to the respondent, proposed the name of Mr.Justice S.P.Garg (Former Judge of Delhi High Court) to be appointed as Sole Arbitrator to adjudicate the disputes between the parties, for which, the respondent vide Reply dated 02.12.2022, raised its objections. Thereafter, on 06.12.2022, a meeting was held between the parties, however, the dispute was not settled.

2.2. At this stage, the petitioner sent a Legal Notice dated 17.01.2023 to the respondent, once again proposed the name of Mr.Justice S.P.Garg (Former Judge of Delhi High Court) to be appointed as Sole Arbitrator. After the receipt of said notice, the respondent vide Reply dated 11.02.2023, provided a panel of Arbitrators to the petitioner, for which, the petitioner vide Rejoinder dated 28.02.2023 indicated its disagreement for appointing an Arbitrator from the panel suggested by the respondent. Therefore, the learned counsel prayed this Court to appoint an Arbitrator for adjudicating the dispute arisen between the parties in connection with the Purchase Order dated 07.03.2022.



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3. The learned counsel appearing for the respondent has also agreed that the dispute between the parties is arbitrable as per Clause Nos.28.1 & 28.2 of the Purchase Order dated 07.03.2022. Therefore, she has no objection for appointment of an Arbitrator.

4. Heard the learned counsel on either side and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel on either side, it is crystal clear that the dispute between the parties is arbitrable as per Clause Nos.28.1 & 28.2 of the Purchase Order dated 07.03.2022. Hence, this Court is inclined to pass the following order:

(i) The Hon'ble Mr.Justice K.Ravichandra Baabu, Former Judge of this Court, 1D, Crescent Castle, 13/6, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai – 600 020, Mobile No.9498033336 is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.



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(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by her, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the 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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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Note to Registry: Issue order copy on 12.07.2023



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KRISHNAN RAMASAMY, J.

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