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Arb.O.P.(Com.Div.) Nos.304 to 306 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div.) Nos.304 to 306 of 2023

M/s.Neelansh Electrotech Systems Pvt. Ltd.,
Rep. by its Authorized Signatory,
Mr.Pankaj Maini,
Office at No.E-5, 1st Floor, Bali Nagar,
New Delhi – 110 015.

... *Petitioner in all OPs*

Vs.

Engineering Projects (India) Ltd. (EPI),
Having office at Core-3,
Scope Complex, 7 – Institutional Area,
Lodhi Road, New Delhi – 110 003,
Rep. by its
Chairman-cum-Managing Director (CMD)

... *Respondent in all OPs*

Common Prayer : Arbitration Original Petitions (Commercial Division) filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator as per terms set out in Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, to decide the dispute between the petitioner and the respondent arising out of the Work Order Nos.SRO/PMD/689/173, SRO/PMD/712/098 and SRO/PMD/712/138 dated 09.02.2016, 17.12.2014 and 26.06.2015 respectively.



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For Petitioner : Ms.Anukriti Anand
(in all OPs)

For Respondent : Mr.Althaz M. Hussain
(in all OPs)

COMMON ORDER

These petitions have been filed under Section 11 of the Arbitration and Conciliation Act (hereinafter called as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. Work Orders were issued by the respondent in favour of the petitioner. According to the petitioner, in terms of the Work Orders, the petitioner has completed the work. However, according to the petitioner, despite completion of the work, the respondent failed to pay the outstanding dues of the petitioner. The details of the Work Orders corresponding to the Arbitration Original Petitions are as follows:-

S.No.	Case No.	Work Order	Date
1.	Arb.O.P.(Com.Div.)No.304/2023	SRO/PMD/689/173	09.02.2016
2.	Arb.O.P.(Com.Div.)No.305/2023	SRO/PMD/712/098	17.12.2014
3.	Arb.O.P.(Com.Div.)No.306/2023	SRO/PMD/712/138	26.06.2015



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3. The petitioner has invoked arbitration in accordance with the arbitration clause contained in the respective Work Orders by issuing notice to the respondent on 10.02.2022. A reply has also been sent by the respondent to the petitioner to the arbitration invocation notice on 08.03.2022. Since there has been no consensus between the parties with regard to the name of the Arbitrator, these petitions have been filed seeking for appointment of an Arbitrator by this Court.

4. Till date, no counter-affidavit has been filed by the respondent.

5. The learned counsel for the respondent admits that there is an arbitration clause available in the respective Work Orders, which are the subject matter of the dispute. He would at the same time submit that the respondent has addressed letter to the petitioner on 14.09.2023, without prejudice to the rights and contentions, offering to settle the dues of the petitioner.



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6. The learned counsel for the petitioner is not aware of the same and she would also submit that she has not received any instructions to that effect from her client.

7. Admittedly, there is an Arbitration Agreement between the parties in the subject matter of the dispute, which are the Work Orders referred to *supra*.

8. The petitioner claims that certain sums of money are outstanding which are due and payable by the respondent under the Work Orders referred to *supra*. There is an Arbitration Agreement in the Work Orders which are the subject matter of the dispute and the same is extracted hereunder:-

“76.0 Arbitration

76.1 Before resorting to arbitration as per the clause given below, the parties if they so agree may explore the possibility of conciliation as per the provisions of Part-III of the Arbitration and Conciliation Act, 1996. When such conciliation has failed, the parties shall adopt the following procedure for arbitration:



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- i) *Except where otherwise provided for in the contract, any disputes and differences relating to the meaning of the Specifications, Design, Drawings and Instructions herein before mentioned and as to the quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, Designs, Drawings, Specifications, Estimates, Instructions, or these conditions, or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the Sole Arbitration of the Chairman and Managing Director (CMD) of Engineering Projects (India) Limited (EPI), or any other person discharging the functions of CMD of EPI and if CMD or such person discharging the functions of CMD of EPI is unable to act, to the sole Arbitration of some other person appointed by CMD of EPI or such other person discharging the functions of CMD of EPI. There will be no objection if the arbitrator so appointed is an employee of Engineering Projects (I) Ltd. However, such an employee shall not have directly dealt with the said Contract or the works there under on behalf of EPI. Such Arbitrator shall be appointed*



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within 30 days of the receipt of letter of invocation of arbitration duly satisfying the requirements of this clause.

- ii) If the arbitrator so appointed resigns or is unable or unwilling to act due to any reason whatsoever, or dies, the Chairman & Managing Director aforesaid or in his absence the person discharging the duties of the CMD of EPI may appoint a new arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new arbitrator so appointed may proceed from the stage at which it was left by his predecessor.*
- iii) It is a term of the contract that the party invoking the arbitration shall specify the dispute / differences or questions to be referred to the Arbitrator under this clause together with the amounts claimed in respect of each dispute.*
- iv) The Arbitrator may proceed with the arbitration ex-parte, if either party, in spite of a notice from the arbitrator, fails to take part in the proceedings.*
- v) The work under the contract shall continue as directed by the Engineer-in-Charge, during the arbitration proceedings.*
- vi) Unless otherwise agreed, the venue of arbitration proceedings shall be at the venue given in the 'Memorandum' to the 'Form of Tender'.*



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vii)*The award of the Arbitrator shall be final, conclusive and binding on both the parties.*

viii)*Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made there under and for the time being in force shall apply to the arbitration proceedings and Arbitrator shall punish his Award accordingly.*

9. The jurisdiction clause is also found in Clause 76.3 of the general conditions which is extracted hereunder:-

76.3 JURISDICTION

The courts mentioned in the 'Memorandum' to the 'Form of Tender' alone will have jurisdiction to deal with matters arising from the contract, to the exclusion of all other courts. ”

10. Since there is a valid Arbitration Agreement between the parties to the dispute and there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator.



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11. For the foregoing reasons, these Arbitration Original Petitions are allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Hon'ble Tmt.Justice Chitra Venkataraman (Retd.), Former Judge of Madras High Court, having Office at New No.31, Old No.17-B, 4th Main Road, Raja Annamalaipuram, Chennai – 600 028, Mobile No: 9840990000, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Work Orders Nos.SRO/PMD/689/173, SRO/PMD/712/098 and SRO/PMD/712/138 dated 09.02.2016, 17.12.2014 and 26.06.2015 respectively.

(b) The Arbitrator shall be paid her remuneration/fees in accordance with the mutual agreement between the parties or as per the IV Schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the Arbitrator's fees.



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(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

22.09.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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