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Arb.O.P.(Com.Div.) No.324 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

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M/s.Powertech Constructions Pvt. Ltd.,  
Rep. by its Managing Director P. Krishnasamy,  
Having its Registered Office at  
1/40K, PCM Colony, St. Thomas Mount,  
Chennai – 600 016.

... Petitioner

**Vs.**

M/s.Refex Energy Ltd.,  
Rep. by its Managing Director,  
Having their registered Office at  
No.202, 2<sup>nd</sup> Floor, Center Point,  
Jijibhoy lane, Lalbaug,  
Mumbai – 400 012.

... Respondent

**Prayer :** Arbitration Original Petition (Commercial Division) filed under Section 11(6)(a) & (c) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator on behalf of the respondent to resolve the dispute between the parties that has arisen under Work Order No.REL/NLC-109MW-1819101A&B/WO-20/2018-2019, REL/NLC-100MW-1819102/WO-71/2018-2019 and REL/NLC-100MW-1819102/WO-90/2018-2019 dated 09.01.2018, 02.03.2019 and



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24.04.2019 respectively, for Erection Testing, Commissioning of 230 KV Bay Extension Work.

For Petitioner : Mr.Ajoy Kumar Gnanam

For Respondent : Set *exparte*

### **ORDER**

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. The respondent has been served through substituted service. The name of the respondent is also printed in the cause list today. Despite the same, till date, no one has entered appearance on behalf of the respondent. Hence, the respondent is set *exparte* by this Court.

3. The respondent has placed Work Orders with the petitioner which are dated 09.01.2018, 02.03.2019 and 24.04.2019. The terms and conditions of the Work Orders are in the form of an Agreement attached to



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the said Work Orders. There seems to be a dispute arising out of the Work Orders referred to *supra* between the parties. There is an arbitration clause available in the respective Work Orders which is extracted hereunder:-

***“24. Arbitration:*** Any dispute shall be tried to settle amicably by both the parties. If not settled, the dispute shall be referred to the panel of arbitrators consist of total 03 arbitrators, wherein one arbitrator shall be appointed by the Contractee, another by the Contractor and the third presiding arbitrator shall be appointed by Two appointed arbitrators. The decision of arbitrators shall be final and binding for both the parties and award shall promptly be paid. Procedural law shall be the Indian Arbitration and Conciliation Act, 1996. And any of its modification thereof Venue of the arbitration shall be at Chennai.”

4. The petitioner has invoked arbitration in accordance with the arbitration clause by appointing one Arbitrator Mr.Y.K. Rajagopal, Advocate. As seen from the document filed along with this petition, the respondent earlier appointed Mr.M.S. Seshadri, Advocate. However,



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Mr.M.S. Seshadri, has recused himself from being an Arbitrator.

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According to the petitioner, despite Mr.M.S. Seshadri's recusal, till date, the respondent has not appointed a new Arbitrator on their behalf in place of Mr.M.S. Seshadri. Under those circumstances, this petition has been filed, seeking for appointment of an Arbitrator by this Court.

**5.** The arbitration clause stipulates appointment of three Arbitrators.

One to be appointed by the petitioner, other to be appointed by the respondent and both the appointed Arbitrators will have to appoint a 3<sup>rd</sup> Arbitrator (Presiding Arbitrator). Since the respondent has till date not chosen to appoint its Arbitrator despite the arbitration invocation notice, as well as the subsequent letters sent by Mr.Y.K. Rajagopal, the Arbitrator appointed by the petitioner, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Act.

**6.** For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Mr.K.M. Aasim Shehzad,  
Advocate, having Office at BFS Legal No.47/1, Rams



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Swabi Apartments, 1<sup>st</sup> Main Road, R.A. Puram, Chennai – 600 028, Mobile No:9841026786, as an Arbitrator on behalf of the respondent to adjudicate the dispute between the petitioner and the respondent arising out of the Work Orders dated 09.01.2018, 02.03.2019 and 24.04.2019 as well as the terms and conditions attached to the Work Orders, on merits and in accordance with law.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator appointed by this Court as well as the Arbitrator appointed by the petitioner shall appoint 3<sup>rd</sup> Arbitrator/Presiding Arbitrator. The panel of 3 Arbitrators shall adjudicate the dispute arising out of the Work Orders dated 09.01.2018, 02.03.2019 and 24.04.2019 as well as the terms and conditions attached to the Work Orders, on merits and in accordance with law.



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**ABDUL QUDDHOSE, J.**

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

(e) The panel of Arbitrators 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.

**27.09.2023**

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

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