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Arb.OP.(comdiv) No.241 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.241 of 2023

M/s.KCP Infra Limited,
(formerly known as
M/s.KCP Engineers Pvt. Ltd.)
Rep. By its Director Mr.K.Muthukumarasamy
No.4, Ground Floor, Alayam Space,
Anandha Road, Alwarpet,
Chennai – 18.

.. Petitioner

-VS-

1.The Superintending Engineer,
Special Projects,
Chennai Smart City Limited,
Greater Chennai Corporation,
Rippor Building,
Chennai – 3

2.The Executive Engineer,
Special Projects,
Chennai Smart City Limited,
Greater Chennai Corporation,
Rippor Building,
Chennai – 3

.. Respondents



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Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator as per paragraph No.5 of the agreement dated 09.03.2018.

For Petitioner : Mr.A.Vikash

For Respondents : Ms.P.T.Ramadevi, Standing counsel

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. The petitioner was a contractor for the respondents under the contract dated 09.03.2018. There seems to be a dispute between the parties arising out of the said contract dated 09.03.2018. There is an arbitration clause available in the contract dated 09.03.2018, which is extracted hereunder:-

“32. Adjudicator:

The employer proposes to appoint an Adjudicator under the Contract, at a daily fee of Rs.5,000/- plus reimbursable expenses as per actual. If the Bidder disagrees with this proposal,



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the Bidder should so state in the Bid. If the name of the Adjudicator, suggested by the contractor is not acceptable to the employer, then the adjudicator shall be appointed by the Chairman, Institute of Engineers, Chennai Region at the request of either party.

33. Arbitration:

In the case of any dispute or difference between the parties to the contract either during progress or after the completion of the work or after the termination, abonnement or breach of contract or as to any matter or thin arising there under except as to the matters left to the sole discretion of the Superintending Engineer as to the withholding by the Superintending Engineer of payment of any bill to which the contractor may claim to be entitled then either party shall forthwith give to the other, motive of such dispute or difference shall be referred to the Arbitrator and the award of such Arbitrator shall be Final binding on the parties, progress of work shall not be suspended or delayed on account of the reference of the dispute to arbitration under this clause.”



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3. The petitioner had invoked the arbitration clause by issuing a notice to the respondents on 06.12.2022. A reply was also sent by the respondents agreeing for arbitration. However, since there has been no consensus between the parties with regard to the name of an arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

4. Learned standing counsel for the respondents, on instructions, would submit that the respondents are agreeable for an arbitrator to be appointed by this Court. The said submission is recorded.

5. Since there is a valid arbitration clause in the contract dated 09.03.2018, which is the subject matter of dispute between the parties, this Court will have to appoint an arbitrator. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints the Hon'ble Mr.Justice M.Sathyanarayanan, former Judge of this Court, residing at Old No.9, New



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No.5/1, 2nd avenue, 2nd extension, Indra Nagar, Adyar, Chennai – 20 (Mobile No.9498022255), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondents arising out the contract dated 09.03.2018.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration/fees as per the schedule agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

28.07.2023

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ABDUL QUDDHOSE, J.

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