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Arb. O.P. (Com. Div.) No.258 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.258 of 2023

VA Tech Wabag Limited,
Rep. by its Authorised Signatory,
Meenkshi Sundaram

...

Petitioner

vs.

Sunshine Sheets Piling Projects India,
No.51/E, Agarwala Garden Road,
Nandana
Kolkata - 700 034,
West Bengal

...

Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent in terms of the Arbitration Agreement in clause 20 of the Annexure to the Purchase Order dated 27.11.2019 and to direct the respondent to pay the costs to the petitioner.

For petitioner
For respondent

: Mr.C.P. Prasanth Gopal
: No appearance

ORDER



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

2. The petitioner had placed a Work Order with the respondent on 27.11.2019 requesting the respondent to supply certain materials. The petitioner claims that an advance amount was also paid in terms of the Work Order. The Work Order was also amended on 17.02.2020. However, the respondent despite the receipt of the advance amount has failed to supply the materials to the petitioner in terms of the Work Order. As per the dispute resolution clause available in the terms and conditions of the sale, the petitioner has also referred the dispute to mediation by its letter dated 03.11.2022. Despite the efforts made by the petitioner for mediation no fruitful purpose was served. Therefore in accordance with the arbitration clause contained in the terms and conditions of the sale, the petitioner had invoked the arbitration by issuing a notice to the respondent on 05.12.2022, which is extracted hereunder :

20. Arbitration & Jurisdiction



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"Unless otherwise specified in all cases of dispute which cannot be settled by mutual negotiations the matter shall be referred to the Managing Directors of both Parties for mediation. If the dispute persists for a period of 14 days from the day of reference to mediation, the matter shall be referred for arbitration in accordance with Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof being in force at that time. Order shall be executed by the Supplier / Contractor during arbitration proceedings unless otherwise directed in writing by the purchaser. All such arbitration proceedings shall be conducted in English language and will be held at Chennai only. All disputes shall be subject to the sole jurisdiction of Chennai courts only. This order shall be governed by the laws of India"

3. The arbitration invocation notice dated 05.12.2022 was also received by the respondent as seen from the tracking report issued by the postal department website. Since there has been no consensus with regard to the name of the arbitrator, this petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator. The notice in this application has been duly served on the respondent and the name of the respondent is also printed in the cause list today.

4. Since there is a valid arbitration agreement entered into between the petitioner and the respondent arising out of the Work Order, dated 27.11.2019 and the amended Work Order dated 17.02.2020 and the



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petitioner has also invoked the arbitration clause by sending the arbitration invocation notice dated 05.12.2022 as per the provisions of Section 21 of the Arbitration and Conciliation Act, 1996 which has been duly acknowledged by the respondent and there being no consensus with regard to the name of the arbitrator between the parties, this Court will have to necessarily appoint an arbitrator to adjudicate the dispute between the parties arising out of the Work Order, dated 27.11.2019 as well as the amended Work Order, dated 17.02.2020.

5. For the foregoing reasons, this Court appoints Mr.S.F. Akbar, District Judge (Retd.) as a sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Work Order dated 27.11.2019 and the amended Work Order dated 17.02.2020. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

a) This Court appoints Mr.S.F. Akbar, District Judge (Retd.), having office at Plot No.4, Fathima Villa, Pillaiyar Koil, 4th Cross Street, Perungudi, Chennai - 600 096 (Mobile No.9840094439) as a sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the



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Work Order dated 27.11.2019 and the amended Work Order

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(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) The sole arbitrator shall adhere to the provisions of the Arbitration & Conciliation Act, 1996, while passing the arbitral award, 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.

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

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ABDUL QUDDHOSE, J.



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