



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arb.O.P.No.24 of 2023

R.Murugan ... Petitioner

Vs.

1.G.K. Development Pvt.Ltd.
Rep by its Director G.Karthick

2.G.Karthick- Director
G.K. Development Pvt Ltd.

3.G.Sundar- Director
G.K. Development Pvt Ltd.

... Respondents

PRAYER: Petition filed under Section 11(6) of the Arbitration and Conciliation Act-1996, prays to appoint an arbitrator to resolve the disputes arising out of the Service Order Agreement dated 19.09.2016 between the Petitioner and the Respondents.

For Petitioner : Mr.M.S.Krishnan,Senior counsel

for M/S.C.Krishnamoorthy

For Respondents : Mr.S.N.Arunkumar



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ORDER

This original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act seeking to appoint an Sole arbitrator to resolve the disputes arising out of the Service Order Agreement dated 19.09.2016 between the Petitioner and the Respondents.

2. Heard the submission made by the learned senior counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

3. The 1st respondent company has engaged the petitioner to undertake the engineering projects involving Airport Planning, Design & Construction, Revetment & Seawall Construction, Road Development & Rehabilitation, Sewerage & Wastewater Treatment Plants Construction, Urban Planing, Design & Construction and Mining Activities. After discussions, the petitioner was also entrusted with the responsibility of an independent contractor to deal with licensing / procurement & importation of goods incidental to their engineering projects. The petitioner was offered with a service agreement which is known as 'Service Order' and it is duly signed by the 2nd respondent in his capacity as Director to the 1st respondent company. As per the Service Order dated 19.09.2016, the petitioner was



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entrusted with the above responsibility for a period of 10 years from the date of 19.09.2016. In the said agreement the parties have agreed the arbitration clause as under:

“ The Agreement is effective for 10 years. If we terminate or cancel the agreement, we will accept at least for 5 years that amount of Rs.4,35,00,000/- (Rupees Four Crore Thirty Five Lakhs Only) is payable to Mr.Murugesh, tax not included in this amount”

3.1. The petitioner had rendered the service as agreed in the Service Order and he was issued with the following cheques by the 2nd respondent at the end of three years period:

S.No	DATE	CHEQUE NOS	AMOUNT
1	30.09.2019	012853	Rs.2,37,51,000/-
2	15.10.2019	012854	Rs.1,01,79,000/-

When the cheques were presented for collection, they were dishonored as 'account closed'. When the petitioner tried to contact the 2nd and 3rd respondents, they wantonly evaded the calls and communications of the petitioner. Hence, the petitioner had no other option except to invoke the Arbitration clause as per clause 6 of the Service Order agreement dated 19.09.2016 and nominated either of the three following retired Judges of the High Court :(i) Hon'ble Mr.Justice Govindaraj, Retired Judge, Madras High Court (ii) Hon'ble Mr.Justice Jothimani, Retired Judge, Madras High



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Court and Hon'ble Mr. Justice K. Venkatraman, Retired Judge, Madras High Court and issued notice under Section 21 vide Arbitration Notice dated 05.02.2022 seeking consent for the proposed arbitrations.

4. The learned counsel for the petitioner submitted that the respondent denied the very existence of the arbitration clause and was evasive. The 3rd respondent has signed both the cheques in pursuant to the Service Order between the petitioner and the 1st respondent represented by the second respondent. A dispute arose due to default in payment and hence the petitioner nominated three retired Judges of the High Court to choose one among them to act as a sole Arbitrator. But the respondents did not come forward to cooperate for the appointment of the Arbitrator. Hence the petitioner has come out with this application to appoint a sole arbitrator to resolve the disputes arising out of the Service Order Agreement dated 19.09.2016 between them.

5. The learned counsel for the respondents submitted that there is no dispute between the petitioner and the respondents. It is submitted that the petitioner has given some criminal complaints and also filed a complaint under Section 138 of the Negotiable Instruments Act-1881 and hence there is no necessity to appoint any arbitrator.



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6. Heard the submissions made by both sides learned counsels and perused the materials available on record.

7. A copy of the Service Order agreement dated 19.09.2016 contains Arbitration Clause 6 reads as follows:

“It is agreed to have the support of professional and legal hands in the way to solve any unexpected issues or disputes between us, whereas all claims and disputes arising out of or relating to this agreement are to be settled by binding arbitration in the State of Tamil Nadu. The arbitration shall be on the confidential basis according to the rules of Arbitration Act. Any decision or an award as a result of any such arbitration proceedings shall be in writing and provide an explanation of all conclusion of law and fact, and shall include the assessment of cost and expense and attorney fees. Any such arbitrator who can be of experiences in legal field and shall include a written record of hearing. An award of arbitration may be confirmed in a court of competent jurisdiction. “

8. So there cannot be any quarrel as to the existence of the arbitration clause agreed between the parties. The service as agreed by the petitioner has been completed and for which the respondents have also given two cheques for Rs.2,37,51,000/- and Rs.1,01,79,000/-. But to the shock of the petitioner those cheques were not honored but returned as account closed. The respondents did not come forward to resolve the dispute thereafter by taking any effective steps. Even the petitioner had sent



notice for appointment of an arbitrator by nominating three retired judges , however, the respondent did not agree. The respondent sent a reply notice denying the very service said to be provided by the petitioner. The above exchanges would only show that a dispute has arisen between the petitioner and the respondents and which the parties have already agreed to resolve through arbitration by appointing an arbitrator.

9.In view of the above stated reasons, this Court appoints **Mr.M.Govindaraj, Former Judge Madras High Court**, residing at No.4/225, South 2nd cross street, Shree Kabaleeshwar Nagar, Neelangarai, Chennai-600 041 (Cell Number: 9444257157, 9444094403) as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per the schedule to the Arbitration & Conciliation Act, 1996. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The disclosure and declaration may be made



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by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

10. This application is **allowed** accordingly and the parties are liable to bear their own costs.

11.07.2023

jrs



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R.N.MANJULA, J.

jrs

Copy to:

Mr.M.Govindaraj,
Former Judge,
Madras High Court.

Residing at
No.4/225,
South 2nd cross street,
Shree Kabaleeshwar Nagar,
Neelangarai,
Chennai-600 041

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