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Arb. O.P (Com.Div). Nos.663 and 665 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P.(Com.Div). Nos.663 and 665 of 2022

M/s.S.K.Engineering and Construction Company,
Rep. by its Authorised Signatory,
T.Sivakumar, I Floor, Unit B-4, TNHB Flats,
Fairlands, Salem - 636 016.

... Petitioner
in both O.Ps.

Vs.

M/s.Bharat Heavy Electricals Ltd.,
Rep. by its General Manager,
Civil/Factory/Planning,
Tiruchirappalli - 620 014.

... Respondent
in both O.Ps.

PRAYER in Arb.O.P.No.663 of 2022 : This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator for adjudicating the disputes that have arisen between the petitioner and the respondent under the Contract No.017/2016-17 vide Letter of Intent dated 25.08.2016 of the respondent in respect of the contract for Annual Maintenance contract for factory building of civil & structural steel building works interior decorations, water supply, roads, Railways sidings, horticulture, housekeeping, sanitation etc., in HPBP, SSTP, Unit-II & connected peripheral area in the entire factory complex of BHEL, Trichy.



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PRAYER in Arb.O.P.No.665 of 2022 : This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator for adjudicating the disputes that have arisen between the petitioner and the respondent under the Contract in respect of maintenance for civil work in Power plant Piping unit of respondent vide Letter of Intent of respondent dated 29.06.2017 bearing Ref.No.PPPU : WC : 16 : 021.

For Petitioner : Mr.T.Sai Krishnan
in both O.Ps.

For Respondent : Mr.K.Prabhakar
in both O.Ps.

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COMMON ORDER

The above Original Petitions have been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, seeking to appoint an Arbitrator for adjudication of dispute between the petitioner and respondent.

2. The learned counsel for the petitioner submits that the petitioner - Company is engaged in the business as civil contractors and it is a registered contractor with the respondent and has done several works for the respondent starting from the year 2008-2009 onwards. He further submits that the respondent floated tenders dated 20.06.2016 and 18.01.2017, respectively, for



Annual Maintenance contract for factory building of civil & structural steel building works, etc. and the petitioner participated in the said tenders and the contract was awarded to the petitioner vide Letter of Intent dated 25.08.2016 and 29.06.2017, respectively. In accordance with the tender, the petitioner deposited the amount towards security amount and the petitioner completed the entire work as awarded in the above said Letter of Intent to the satisfaction of the respondent. But, the respondent withheld the said amount without any valid reason and did not disburse the same for the work done by the petitioner as per the Letter of Intent.

3. The learned counsel for the petitioner further submits that after filing of these petitions, the respondent has paid some amount. However, the entire amount has not been paid. Therefore, the learned counsel for the petitioner submits that as per Clause 58 of General Conditions of Contract, the present dispute can be referred to the Arbitrator. The said Clause 58 of the General Conditions of Contract reads as follows:-

"58. Arbitration:-

Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instruments hereinbefore mentioned and as to the quality of workmanship or materials used



on 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, orders or these conditions or otherwise concerning the work 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 Executive Director/ General Manager of BHEL and if ED is unable or unwilling to act, to the sole arbitration of some other person appointed by the ED / General Manager, willing to act as such arbitrator. The cases referred to arbitration shall be other than those for which the decision of the Manager/ Senior Engineer/ Engineer-in-charge is expressed in the contract to be final and conclusive. There will be no objection if the arbitrator so appointed is an employee of B.H.E.L and that he had deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute or difference.

The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Executive Director/ General Manager as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

Subject as aforesaid the provision of the Arbitration & Reconciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.



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It is a term of the contract that the party involving arbitration shall specify the dispute or dispute to be referred to arbitration under this clause together with the amount of amounts claimed in respect of each such dispute.

The arbitrator(s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the Contract shall, if reasonable possible, continue, during the arbitration proceedings and no payment due or payable, to the Contractor shall be withheld on account of such proceeding.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of first hearings.

The arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding on all parties to this contract."

4. The learned counsel for the respondent would submit that the respondent is also entitled to recover the amount from the petitioner in terms of Clause 55 of General Conditions of Contract, which reads as follows:-

55. Recovery from Contractor:-

Whenever under the contract any sum of money shall be recoverable from or payable by the contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the contract or under any other Contract with BHEL or from his



Security Deposit or he shall pay the claim on demand.

However, the learned counsel for the respondent would fairly submit since the present disputes involves recovery of balance due, the matter may be referred to the Arbitrator.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In view of the submissions made by the learned counsel appearing on either side and the fact that the present dispute is arising out of Letter of Intent dated 25.08.2016 and 29.06.2017 for which, General Conditions of Contract could automatically apply, this Court is of the considered view that the present dispute can be referred to the Arbitrator in terms of Clause 58 of the General Conditions of Contract.

7. Accordingly, ***Mrs.M.Shirijha, Advocate, residing at F3, Aradhana Apartments, Temple Avenue, Srinagar Colony, Saidapet, Chennai - 600 015, Mobile No.9940195896, and Enrollment No.1036/1992, is appointed as Arbitrator to enter upon reference and adjudicate the disputes inter***



se the parties. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by her and the same shall be borne by the parties equally.

8. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. It is open to the parties to raise all the issues, which have been put forth before this Court and the learned Arbitrator is directed to decide the issue between the parties on his own, without taking any observation made in this order.

01.03.2023

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To

M/s.Bharat Heavy Electricals Ltd.,
Rep. by its General Manager,
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