



Arb.Original Petition (Com.Div.) No. 64 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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M/s.Zamil Construction India Pvt. Ltd.,
Rep. by its Authorised Signator,
S.Shanti,
Almonte Software Park, Office No.101,
First Floor, Plot No.2, S.No.8,
Kharadi - 411 014, Pune,
Maharashtra.

Also at:

Kochar Technology Park,
Door No.SP-31A, 2nd Floor, 1st Cross Road,
Ambattur Industrial Estate, Ambattur,
Chennai - 600 058.

... Petitioner

Vs.

M/s.P & C Projects (P) Ltd.,
Rep. by its Chairman & MD,
P & C Towers 140, 2nd Floor,
Perundurai Road,
Erode - 638 011, Tamil Nadu.

... Respondent



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PRAYER: The Original Petition has been filed under Section 11(6) (a) & (c) of Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of the Arbitrators of Madras High Court Scheme, 1996, to appoint a Presiding Arbitrator to adjudicate all the disputes between the petitioner and the respondent arising out of or in connection with the Sub-Contract Agreement dated 11.05.2015 and the amended Sub-Contract Amendment dated 17.11.2018 executed between the petitioner and the respondent.

For Petitioner : Mr.K.Moorthy

For Respondent : Mr.P.J.Rishikesh

ORDER

The present Original Petition has been filed to appoint a Presiding Arbitrator to adjudicate all the disputes between the petitioner and the respondent arising out of or in connection with the Sub-Contract Agreement dated 11.05.2015 and the amended Sub-Contract Amendment dated 17.11.2018 executed between the petitioner and the respondent.



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2. The learned counsel appearing for the petitioner submits that a dispute has been arisen for the payment of the outstanding claim amount towards wrongful invocation of the Performance Bank Guarantee ('PBG'), Guarantee No.160390IBGP00694, dated 01.07.2016, for a sum of Rs.15,00,000/- valid up to 24.11.2016, which was issued by IDBI Bank Limited, Pune - 410 016, which was furnished by the petitioner to the respondent under the agreement arrived between the parties in terms of the Sub-Contract Agreement dated 11.05.2015 and also toward the payment of the outstanding claim amount in terms of the invoices/bills raised from time to time upon the respondent, for the job work done by the petitioner and the Sub-Contract Agreement and the amended Sub-Contract agreement. He further submits that the respondent is liable to pay a sum of Rs.19,94,000/- along with interest at the rate of 18% per annum with effect from July, 2019, for the delayed payments.

3. According to the petitioner, the present dispute among the parties to the proceedings are arbitrable in terms of Clause 30 of the Sub-Contract



Agreement dated 11.05.2015. The said Clause is extracted as followed:-

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"30. Arbitration:-

This agreement will be subject to the laws of Government of India and shall be governed under the exclusive jurisdiction of the Court of law in Tamil Nadu.

In the event of any dispute or difference arising out or in connection with this agreement shall be settled amicable by the negotiations between the authorized representative of both the parties, failing which such dispute or difference shall be resolved by an Arbitral Tribunal consisting of three arbitrators. Each party shall nominate one arbitrator and both the appointed arbitrators shall nominate one arbitrator who shall act as the Presiding Arbitrator. The arbitrator proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The decision of Tribunal shall be final and binding on both the parties.

The venue of Arbitration shall be at Chennai jurisdiction and the language used shall be in English."

By referring to the above said Clause, the learned counsel appearing for the petitioner submits that the present dispute can be referred to an Arbitral Tribunal consisting of three arbitrators. However, he would agree to appoint a Sole Arbitrator as the costs of arbitration will be reduced.



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4. For the said submissions, the learned counsel appearing for the respondent also agreed to appoint a Sole Arbitrator to resolve the disputes between the parties.

5. Considering the submission made by the learned counsel appearing on either side, this Court is of the considered view that the present dispute squarely falls within the scope of the Sub-Contract Agreement. Hence, ***Hon'ble Mr. Justice V. Parthiban, Former Judge, High Court of Madras, residing at No. 5069, 12th Street, 'Z' Block, Anna Nagar, Chennai - 600 040, Mobile No. 9444094401,*** 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 him and the same shall be borne by the parties equally.



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KRISHNAN RAMASAMY, J.

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6. 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.

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