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Arb.O.P(Com.Div.) No.91 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.91 of 2024

Er.S.Mailvelu

Registered Contractor & Registered Engineer

Applicator – Construction Chemicals

No.295, Bharathi Street,

Puducherry – 605 001.

... Petitioner

Vs.

1.The Chief Enigneer

Public Works Department

Government Of Puducherry

Puducherry

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation 1995 as Amended by Act 2015 for appointment of sole arbitrator to adjudicate upon the claims of the petitioner as per the Arbitration Applications dated 13.10.2021 and 21.06.2023 submitted by the petitioner to the first respondent herein viz., the Chief Engineer, Public Works Department, Government of Puducherry as per the Agreement No.18/TA/PW/BRC/2015-16 dated 22.02.2016 and as per Clause 25 of the General Conditions of the Contract for Public Worjs 1996 and as amended Act 2015.

For Petitioner

: Mr.N.Thiagarajan

For Respondents

: Mr.P.A.Kothandaraman, GA (Pondy)



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ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act for appointment of an Arbitrator.

2. The dispute between the petitioner and the respondents is arbitrable in terms of the Contract Agreement dated 22.02.2016. The relevant clause reads as under :-

“The arbitration shall be conducted in accordance with the provisions of the Arbitration and conciliation Act, 1996 (26 of 1996) and as amended in January 2005, or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award.

It is also a term of this contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties or in such other manners as may be determined by the arbitrator.

It is also a term of the contract that the arbitrator shall be



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deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties or in such other manners as may be determined by the arbitrator. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner; such costs or anypart thereof shall be paid and fix or settle the amount of costs to be so paid.

3. The petitioner has issued notice under Section 21 of the Arbitration and Conciliation Act on 21.06.2023 and further letter dated 20.10.2023. It appears that earlier also, the petitioner has sent a letter to the respondents on 21.10.2019. However, none of these notices have evoked positive response from the respondents. The petitioner in his letter dated 21.06.2023 has suggested probable arbitrators who are retired Chief Engineers. However, the respondents failed to respond to the same.



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4. Today, the learned counsel for the respondents appeared and filed a copy of the notification issued by the Government of Puducherry in GO.Ms.No.5/LD/2022 dated 23.01.2023, wherein they have consented for appointment of one of the retired judge of this Court as an Arbitrator.

5. Both the counsel have consented to appoint **Hon'ble Mr.Justice K.Kalyanasundaram (Retd), Plot No.406, 5th South Cross Street, Kapaleswarar Nagar, Neelankarai, Chennai – 600 115** as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

6. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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7. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

8. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

9. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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