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Arb.O.P (Com.Div.) No..93 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.04.2024

CORAM

The Hon'ble Mr. Justice Krishnan Ramasamy

Arb.O.P (Com.Div.) No.93 of 2024

Bavya Health Services Pvt. Ltd.,
rep. by its Authorised Signatory
Dr.D.Pavan Kumar
No.503, Sai Balaram Apartments, Sriram Nagar,
Vijayawada,
Andhra Pradesh – 520 010.

... Petitioner

Vs.

NLC India Hospital Ltd.,
Formerly Neyveli Lignite Corporation Ltd.,
NLCI-Hospital,
Neyveli-607803.

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the tender document dated 05.02.2022, in Tender No.NLCIH-0720/P2/GSM/2022 within a time frame fixed by this Court and to direct the respondent to pay costs.

For Petitioner : Mr.Prathap Kumar



Arb.O.P (Com.Div.) No..93 of 2024

For Respondent : Mr.N.Nithianandam

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ORDER

This Arbitration Original Petition has been filed to appoint an arbitrator to decide the disputes that have arisen between the petitioner and the respondent.

2. The learned counsel appearing for the petitioner would submit that the petitioner has participated in the tender floated by the respondent and was declared as a successful bidder; that the respondent issued a Letter of Award dated 14.09.2022, pursuant to which, the petitioner also deposited a sum of Rs.35,62,000/-towards security deposit; that right from the award of the contract i.e. 14.09.2022, the petitioner had been working diligently as per the terms and conditions of the contract, however, the respondent all of a sudden, issued a notice dated 22.12.2022, thereby, terminating the contract, due to such sudden termination of the contract, the petitioner is not in a position to continue with the work further, therefore, the petitioner sought for refund of the earnest money deposit and security deposit; that since the respondent failed to refund the same, the petitioner sent a legal notice and



after exchange of several communications between the petitioner and the respondent, both of them agreed to resolve the dispute before the Conciliator, that the Conciliator, after due process of law, issued a report in favour of the petitioner, but the respondent on 04.11.2023, issued a letter to the Conciliator stating that the recommendation of the Settlement Advisory Committee is not acceptable to them; that since the resolution of dispute through conciliation ended in failure, the petitioner invoked Clauses 76 and 77 to seek its recourse through arbitration and filed the present Petition seeking for appointment of Arbitrator for resolving the dispute in terms of Clause 76 and 77 of the Tender Notification issued by the respondent dated 05.02.2022. Therefore, the learned counsel prayed for allowing this Petition.

3. The learned counsel for the respondent also agreed for appointment of an Arbitrator.

4. This Court, upon hearing the learned counsel appearing for the petitioner and the learned counsel for the respondent and taking into consideration of the fact that, as per the terms and conditions of Tender



Notification issued by the respondent dated 05.02.2022, is of the view that the present dispute among the parties is arbitral in terms of Clauses 76 and 77 of the said notification. In this context, it would be apposite to extract the relevant Clauses of the said Notification, which is extracted hereunder:-

“ Clause 76 :-

- “Dispute, if any, arising out of the terms and conditions of the contract shall be settled amicably between the parties concerned.
- In the unlikely event of any solution reached not satisfactory to any one of the parties or no solution could be reached, the matter may be referred to and settled through Arbitration.
- The Arbitration procedure shall be as per Arbitration and Conciliation Act, 1996.
- The Arbitrator/Arbitrators shall publish a speaking award.

Clause 77 :-

- If the dispute is not resolved amicably through conciliation, then, the same shall be referred to Arbitration.

.....”



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5. Thus, in view of the above, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the parties on the following terms:-

5.1. Accordingly, Mr.Naveen Kumar Murthi, Advocate, having Office at No.221, New Additional Law Chambers, High Court buildings, Chennai – 600 104, possessing Mobile No.9884740424 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes between the parties.

5.2 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 months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.



5.3 The learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

5.4 The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

5.5 Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.



Arb.O.P (Com.Div.) No..93 of 2024

6. With the above direction, this Arbitration Original Petition is
allowed. No costs.

30.04.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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Arb.O.P (Com.Div.) No..93 of 2024

KRISHNAN RAMASAMY.J.,
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Arb.O.P (Com.Div.) No.93 of 2024

30.04.2024