



WEB COPY



Arb.O.P (Com.Div.) No.141 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.141 of 2024

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

Vs.

M/s.Bharat Heavy Electricals Limited,
Rep by its Executive Director,
High Pressure Boiler Plant,
Tiruchirapalli 620 014.

... Respondent

Arbitration Original Petition 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 Agreement dated 04.08.2022.

For Petitioner : Mr.R.Saravanan

For Respondent : Mr.S.Shyam Kumar



Arb.O.P (Com.Div.) No.141 of 2024

ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that the petitioner and the respondent had entered into an agreement dated 04.08.2022. The total value of the Agreement is a sum of Rs.2,40,00,000/-. As per the agreement, the date of completion of the Contract is 03.11.2023 i.e., a period of 15 months. Under these circumstances, the respondent had terminated the said Agreement on 18.05.2023.

3. Further, he would submit that prior to the aforesaid termination, the petitioner had spent a sum of Rs.32,96,918/- for the said Contract and hence, they claimed a sum of Rs.24,00,000/- towards damages. Since the dispute between the petitioner and the respondent is arbitrable as per the Arbitration & Conciliation Clause of the Agreement, the petitioner had invoked arbitration and sent a notice dated 20.10.2023 to the respondent calling for



the appointment of Arbitrator. However, no reply was given by the respondent. Hence, the petitioner filed this petition.

4. In reply, the learned counsel for the respondents would also submit that the claim made by the petitioner is only for a sum of Rs.25,00,000/- and the said dispute is arbitrable. Hence, he also requests this Court to appoint an Arbitrator.

5. Heard the learned counsel for the petitioner and the respondents and also perused the materials available on record.

6. In the present case, upon perusal of the Agreement dated 04.08.2022, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Arbitration & Conciliation Clause of the said agreement, which reads as follows:

“ARBITRATION & CONCILIATION

Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions



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 to 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.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or 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 reasonably 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.

In the event of disputes or differences arising between one public sector enterprise and a Govt. Department or between two public sector enterprises the above stipulations shall not apply the provisions of BPE office memorandum No. BPE/CL 001/76MAN/ 2 (1.10) 75-BPE (GM-1) dated 1 January 1976 or its amendments for arbitration shall be applicable.

Except as provide elsewhere in this contract, in case amicable settlement is not reached between the parties in respect of dispute or difference; arising out of the formation breach termination validity or execution of the contract, or the respective rights and liabilities of the parties, or, in relation interpretation of any provision of the contract, or, in nay manner touching upon the contract the either party may, by a notice in writing to the other party refer such dispute or difference to the sole arbitrations of an arbitrator appointed by Head of the BHEL Unit/Region/Division issuing the contract.



WEB COPY



Arb.O.P (Com.Div.) No.141 of 2024

The arbitrator shall pass a reasoned award and the award arbitrator shall be final and binding upon the parties.

Subject as aforesaid, the provisions of arbitration and conciliation Act 1996 (India) or statutory modification or re-enactments thereof and the rates made thereunder and for the time being in force shall apply to the arbitration proceedings under the clause The seat of arbitration shall be Tiruchirapalli. Tamil Nadu.

The cost of arbitration shall be borne as per the award of the Arbitrator.

Subject to the arbitration in terms of clause, the Courts at Tiruchirapalli. Tamil Nadu Shall have Exclusive jurisdiction over any matter arising out of or in connection with this Contract.

Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Contractors shall proceed with and continue without hindrance the performance of its obligation under this Contract with due diligence and expedition in a professional manner expect where the contract has been terminated by either party in terms of this Contract.

In case of contract with public sector enterprise (PSE) or a Government department, the following shall be applicable:



WEB COPY



Arb.O.P (Com.Div.) No.141 of 2024

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred by either party for arbitration to the sole arbitrator in the Department of public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of public Enterprises. The arbitration and conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the law secretary, department of legal affairs ministry of law and justice, Government of India. Upon such reference the dispute shall be decided by the law secretary or the special secretary or Additional secretary when so authorized by the law secretary, whose decision shall bind the parties hereto finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the arbitrator.”

7. Considering the submissions made by both the learned counsel and in view of the fact that the dispute between the petitioner and the respondent squarely falls within the purview of the Arbitration & Conciliation Clause of



the Agreement dated 04.08.2022, this Court is inclined to appoint an Arbitrator.

8. Accordingly, this Court feels it appropriate to pass the following order:

i) **Mr.M.S.Sampath, Advocate, New No.12 (Old No.42), 3rd Cross Street, Minor Trustpuram, Choolaimedu, Chennai 600 094, Mobile No.98411 59996,** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) 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.

iii) 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



WEB COPY



Arb.O.P (Com.Div.) No.141 of 2024

thereafter, the petitioner can recover the same directly from the respondent and vice versa.

9. This Arbitration Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

29.04.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa

Note: Issue order copy on 14.05.2024.



WEB COPY



Arb.O.P (Com.Div.) No.141 of 2024

KRISHNAN RAMASAMY.J.,
nsa

Arb.O.P (Com.Div.)No.141 of 2024

29.04.2024