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Arbitration O.P. (Com.Div.) No. 632 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arbitration O.P. (Com.Div.) No. 632 of 2022

The State Trading Corporation of India Limited (STC)
No.A-29, Thiru-Vi-Ka Industrial Estate
Guindy, Chennai-600032.

...Petitioner

-VS-

The Managing Director
M/s. Puducherry Agro Products, Food and Civil Supplies
Corporation Ltd., (PAPSCO)
Agricultural Complex, Thattanchavady
Puducherry-605009.

...Respondent

PRAYER: Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to hear and decide the disputes between the respondent and the petitioner in pursuant to Tender No.5/15/e-tender/PAPSCO/DSA/2016-17 dated 31.08.2016.

For Petitioner : Mr.K.V.Prakash

For Respondent : Mr.T.M.Naveen



ORDER

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This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to hear and decide the disputes between the respondent and the petitioner in pursuant to Tender No.5/15/e-tender/PAPSCO/DSA/2016-17 dated 31.08.2016.

2. Heard Mr.K.V.Prakash, learned counsel for the petitioner and Mr.T.M.Naveen, learned counsel appearing on behalf of the respondent.

3. When the matter is taken up for hearing, the learned counsel appearing for the respondent would submit that the winding up proceedings has been initiated and hence, he would seek three months time to settle the issue. I am not inclined to accept the request made by the learned counsel appearing on behalf of the respondent. Firstly, there has been no winding up order passed against the respondent company as on this date. Secondly, the Hon'ble Apex Court has time and again reiterated that a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, cannot be kept pending for a long time. The



present Original Petition had been filed in the year 2021 and had been after compliance of defects admitted on 16.11.2022.

4. The present petition is a petition under Section 11(6) of the Act and the order of the Hon'ble Apex Court in the case of in ***Shree Vishnu Constructions -vs- Engineer in Chief Military Engineering Service & Ors*** reported in ***2022 SCC OnLine SC 1944***, the Hon'ble Apex Court had reiterated the disposal of the Section 11 Petition, the relevant paragraph is extracted hereunder:-

“In that view of the matter, we request all the Chief Justices of the respective High Courts to ensure that all pending applications under Section 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and /or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from today. The Registrar General(s) of the respective High Courts are directed to submit the compliance report on completion of six months from today. All endeavour shall be made by the respective High Courts to decide and dispose of the applications under Section 11(5) and 11(6) of the Arbitration Act and/or any other like application at the earliest and preferably within a period of six months from



the date of filing of the applications.”

The subsequent judgment in ***SBI General Insurance Co. Ltd., -vs- Krish Spinning*** reported in ***2024 SCC OnLine SC 1754*** had held that a petition under section 11(6) seeking appointment of an Arbitrator should not be kept unnecessarily pending. For better appreciation, the relevant paragraph of the said judgment is extracted hereunder:-

“124. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the arbitral tribunal is constituted by the referral court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the referral courts go into the details of issues pertaining to “accord and satisfaction” and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.”

5. Further it is not disputed by the respondent that the issue is not arbitral.



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6. In view of the same, this Court appoints **Hon'ble Ms. Justice T.Krishnavalli**, Former Judge, Madras High Court, residing at Stage I, H2, TNHB Colony, Sreenivasaragavan Nagar, V.M.Chatrum, Tirunelveli – 620011, as Sole Arbitrator to enter upon the dispute between the petitioner and the respondent.

7. The learned Sole Arbitrator is entitled to fix her fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible.

8. Accordingly, this Arbitration Original Petition is ordered.

25.09.2024

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K.KUMARESH BABU, J.
Maya

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