



Arb.O.P (Com.Div.) No.151 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.151 of 2024

M/s.Obedient Constructions,
A partnership firm,
duly represented by its Managing Partner, Mr.David Samraj,
No.223, Arinjar Anna Street,
Thiruvalluvar Nagar,
Ayanavaram, Chennai 600 023.

... Petitioner

Vs.

1.M/s.BGR Energy Systems Ltd.,
Rep by its Managing Director,
443, Anna Salai, Teynampet,
Chennai 600 018,
Tamil Nadu, India.

2.Mr.Arjun Govind Raghupathy,
Managing Director of
M/s.BGR Energy Systems Ltd.,
Having its Office at
443, Anna Salai, Teynampet,
Chennai 600 018,
Tamil Nadu, India.

... Respondents

Prayer:

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Arb.O.P (Com.Div.) No.151 of 2024

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 respondents in terms of the Clause T of the terms of Service Order No.3300022422 dated 21.02.2018 (Arbitration Agreement) for adjudicating the disputes that have arisen between the petitioner and the respondents under the Purchase/Service order No.3300034348 dated 04.07.2021 and to direct the respondents to pay the costs.

For Petitioner : Mr.S.Shyam Kumar

For respondents : Mr.C.P.Prashanth Gopal

ORDER

This Arbitration Original Petition has been filed under Section 11(5)&(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents.

2. The learned counsel for the petitioner would submit that the 1st respondents had issued a Service Order dated 21.02.2018 to the petitioner for the service of fabrication and erection of steel materials. After the



Arb.O.P (Com.Div.) No.151 of 2024

provision of service, the petitioner raised invoices, according to which, the respondents is liable to pay a sum of Rs.1,15,00,000/- along with interest.

Therefore, the petitioner sent a notice dated 25.11.2023 under Section 21 of the Act, invoking Arbitration in terms of Clause (T) of the Service Order. However, no consent was given by the respondents for Arbitration. Hence, this petition has been filed.

3. In reply, the learned counsel for the respondents had also accepted the submission made by the learned counsel for the petitioner and fairly submitted that there is no dispute with regard to the arbitrability of the disputes. However, he would submit that many other matters of the respondents, including the claim of the petitioner, are pending before the NCLT. Therefore, he requests this Court for further time of three weeks.

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



5. In the present case, it appears that the dispute between the parties is arising out of the Service Order dated 21.02.2018. Upon perusal of the said agreement, it is clear that the dispute among the parties arising out of the Service Order and the same can be resolved by virtue of Arbitration as per the Clause (T) of the said Service Order, which reads as follows:

“T. ARBITRATION:

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with Indian Arbitration and the award made in pursuance thereof shall be binding on the parties. The seat of arbitration shall be within Chennai. All arbitration proceedings shall be carried out in English. Pending final resolution of any dispute, the Contractor shall continue to perform his obligations under this contract to the extent such obligations are not being disputed in good faith, unless the Contractor is notified otherwise by BGRESL”

6. Considering the submissions made by the learned counsel for the petitioner and the respondents and also in view of the fact that the dispute between the petitioner and the respondents is arising out of the Service



Order and the same can be resolved by virtue of Clause (T) of the Service

Order dated 21.02.2018, this Court is inclined to appoint a Sole Arbitrator.

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

i) **The Hon'ble Mr.Justice V.Bharathidasan, (Retired), Madras High Court, residing at No.22(L-45), 2nd Main Road, Kamaraj Nagar, Thiruvanmiyur, Chennai – 600 041. (Mobile No.9444383139),** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) Since it was submitted by the learned counsel for the respondents that the proceedings are pending before the NCLT, the learned Arbitrator appointed herein, shall issue notice to the parties in the month of September, 2024 and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of issuance of the said notice. 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



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Arb.O.P (Com.Div.) No.151 of 2024

the event of non-appearance of the respondents, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondents and vice versa.

8. 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 respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

02.08.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 09.08.2024



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Arb.O.P (Com.Div.) No.151 of 2024

KRISHNAN RAMASAMY.J.,
nsa

Arb.O.P (Com.Div.)No.151 of 2024

02.08.2024