



Arb.Appln.No.222 of 2024

Arb.Appln.No.222 of 2024

WEB COPY

KRISHNAN RAMASAMY, J.

This application has been filed to stay the operation of the order on the file of the 2nd respondent in the proceedings dated 25.09.2019, levying penalty and blacklisting the applicant for a period of one year, ending on 25.09.2020, pending disposal of the Arbitration.

2. The learned counsel for the applicant would submit that the applicant and the respondents had entered into an Agreement dated 29.10.2018 for manufacturing and supplying LDBP covers; that despite supply of LDBP covers by the applicant, the respondents have not made any payment to the applicant, hence, the applicant sent several communications to the respondents, however, in the meantime, the respondents raised allegations against the applicant vide a show cause notice dated 05.03.2019 by stating that the quality of the products supplied was inferior and further, proceeded to pass a cumulative order dated 25.09.2019 levying a penalty of 5% of the total value of the contract and also blacklisted the applicant. The learned counsel contended that in the



Arb.Appln.No.222 of 2024

WEB COPY

said proceedings, nothing has been mentioned with regard to the test conducted on the products supplied by the applicant, and therefore, the said allegations raised by the respondents are baseless and vague. Thus, by contending so, he prays this Court to stay the operation of the cumulative order dated 25.09.2019.

2.1 Further, the learned counsel would submit that the dispute between the parties had already been referred to the Arbitrator, who was selected from the panel of Arbitrators approved by the respondents and award was passed on 20.01.2022. Challenging the said award, the applicant had filed a Petition in Arb.O.P.(Com.Div.)No.687 of 2022 before this Court and the same was allowed vide order dated 26.07.2023 and the impugned arbitral award dated 20.01.2022 was set aside on the ground that the Arbitrator has pre-judged the issues and violated the principles of natural justice. Hence, he requests this Court to appoint an Arbitrator, other than the persons from the panel of Arbitrators approved by the respondents to adjudicate the disputes between the parties.



Arb.Appln.No.222 of 2024

WEB COPY

3. Per contra, the learned Standing Counsel for the respondents would submit that as per clause 37 of the said Agreement 29.10.2018, the parties had agreed for the appointment of Arbitrator from the panel of Arbitrators suggested by the respondents. However, in the event if this Court otherwise decides to appoint any independent persons, the same may be appointed in accordance with the law laid down by the Hon'ble Apex Court in accordance with law.

4. In reply, the learned counsel for the applicant would submit that as stated above, the award dated 20.01.2022 passed by the Arbitrator, who was suggested by the respondent as per Clause 37 of the Agreement, was set aside by this Court vide order dated 26.07.2023 on the ground that the Arbitrator has pre-judged the issues and violated the principles of natural justice. Hence, he would submit that the Arbitrators, who are suggested by the respondent as per Clause 37 of the Agreement are the interested persons and they are squarely ineligible to be appointed as Arbitrators. Further, he would contend that such appointment is against the provisions of Schedule V and VII of the Act and also against the law laid down by the Hon'ble Apex Court in “*Perkins Eastman Architects*



Arb.Appln.No.222 of 2024

DPC Vs. HSCC (India) Ltd.” reported in 2019 SCC OnLine SC 1517.

WEB COPY

Therefore, he requests this Court to appoint an Arbitrator to adjudicate the dispute between the parties.

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

6. In the present case, upon perusal of the Agreement dated 29.10.2018, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 37 of the said Agreement, and in this context, it is apposite to extract the relevant clause, which is extracted herein below:-

“37. Arbitration:

In case of any dispute in the tender including the interpretation of any of the clauses of the tender or the agreement to be executed, the matter shall be referred to by the Corporation/tenderer to an Arbitrator who shall be selected the party from the panel of Arbitrators approved by the Board of Directors of the Tamil Nadu Civil Supplies Corporation and communicate the same within 15 days from the



WEB COPY



Arb.Appln.No.222 of 2024

date of receipt of the letter from the Corporation along with the panel of Arbitrators. If there is no reply from the tenderer within 15 days, Corporation shall choose any of the Arbitrator from the panel of the Arbitrator referred to. The remuneration for the Arbitrator and the other expenses shall be shared equally by the Tamil Nadu Civil Supplies Corporation and the other party to the arbitration. The decision of the Arbitrator shall be final and binding on both the parties to the Arbitration. The Arbitrators may with the mutual consent of the parties extend the time for making the award. The award to be passed by the Arbitrator is enforceable in the Court at Chennai city only.”

7. A reading of the above Clause makes it clear that both the parties agreed that if there is any dispute between themselves, the same shall be referred to the Arbitrator, who shall be selected from the panel of Arbitrators approved by the respondents. However, as contended by the applicant, the aforesaid persons appears to be interested persons since the award dated 20.01.2022 passed by the Arbitrator, who was suggested by the respondents at Clause 37 of the Agreement was set aside by this Court vide order dated 26.07.2023 on the ground that the Arbitrator has pre-judged the issues and violated the principles of natural justice.



Arb.Appln.No.222 of 2024

WEB COPY

8. Admittedly, both the parties agreed to settle all the disputes and claims arising out of or relating to the agreement between the parties through arbitration instead of having recourse to civil court to vindicate their rights, however, both the parties failed to ensure that such terms and conditions of the contract are within beyond the scope of the provisions of the Act and the law laid down by the Hon'ble Apex Court, since,, in the present case, the agreement of the parties are contrary to the provisions of the Schedule V and VII of the Act since the said persons, who are suggested to be appointed as Arbitrator at Clause 37 of the Agreement are interested persons. Further, such appointment is also against the law laid down by the Hon'ble Apex Court in *Perkins case* (referred supra).

9. When such being the position, this Court, considering the submissions made by the learned counsel for both the parties and the fact that the dispute between the applicant and the respondents squarely falls within the purview of the Clause 37 of the Contract dated 29.04.2018, suggested as to whether they are agreeable for appointment of

Mr.Ilangovan as the learned Arbitrator, for which, both the learned counsel



Arb.Appln.No.222 of 2024

for the parties have agreed for the same.

WEB COPY

10. Therefore, with consent of both the parties, this Court is inclined to appoint **Mr.M.Ilangovan**, Former District Judge, as learned Arbitrator.

11. Accordingly, this Court passes the following order:-

i) **Mr.M.Ilangovan, Former District Judge, possessing Mobile Nos. 8111022221 & 7010319425, No.10, W-Block, 5th Main Road, Anna Nagar, Chennai 600 040**, is appointed as sole to enter upon reference and to adjudicate the *inter se* dispute between 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.



WEB COPY



Arb.Appln.No.222 of 2024

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

iv) However, since it is submitted by the learned counsel for the applicant that the learned Arbitrator appointed by this Court is not from the Panel of the Arbitrators, and therefore, they have to get prior approval from the Board towards payment of arbitration fees, it is made clear that if any approval is required for payment of fee to the learned Arbitrator, it is for the respondents to take steps for getting approval from the Board and such steps shall be taken within four weeks from the date of receipt of notice from Arbitrator for payment of fee, or, if previous approval is in existence, they shall continue with the same.



WEB COPY



Arb.Appln.No.222 of 2024

v) There shall be an order of interim stay, as prayed for, until the date of first hearing before the learned Arbitrator and in case, the parties seeks any modification/vacation of the said interim order, they are at liberty to approach the Learned Arbitrator seeking for such modification or any other reliefs under the provisions of Arbitration and Conciliation Act 1996.

vi) Thereafter, the learned Arbitrator shall consider the present application as Section 17 application and accordingly, the respective parties may make submission for further continuation of the interim stay granted by this Court.

12. With the above directions, this application is disposed of. No cost.

sd/nsa

29.04.2024

KRISHNAN RAMASAMY, J.

sd/nsa



WEB COPY



Arb.Appln.No.222 of 2024

Arb.Appln.No.222 of 2024

29.04.2024