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Arb.O.P.(Com.Div.) No.440 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.440 of 2023

M/s.Oil and Natural Gas Company Limited,
Cauvery Asset, Neravy,
Karaikal – 609 602.

... Petitioner

Vs.

M/s.Sri Venkatramana Paper Mills Private Limited,
No.15, SreeVatsa Square, MTP Road,
Thudiyalur, Coimbatore – 641 034.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint the respondent's Nominee Arbitrator in terms of the Gas Supply Agreement dated 28.12.2012 to adjudicate the disputes that have arisen between the petitioner and the respondent.

For Petitioner : Ms.Pooja Jain

For Respondent : Mr.P.Venugopal

ORDER

This case is listed under the caption “For Being Mentioned” at the behest of the learned counsel for the petitioner.



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2. The dispute between the petitioner and the respondent is arbitrable in terms of Clause 16 of the Gas Supply Agreement dated 28.12.2012.

3. Both the learned counsel for the petitioner and the respondent have confirmed that the amounts in dispute is more than Rs.5,00,00,000/- and therefore, in terms of Clause 16.02 of the aforesaid Gas Supply Agreement dated 28.12.2012, an Arbitral Tribunal has to be constituted with three arbitrators, namely two arbitrators to be appointed by each of the parties to the dispute and a Presiding Arbitrator to be appointed by the two arbitrators appointed by the parties hereto.

4. The petitioner has nominated Hon'ble Mr.Justice G.M.Akbar Ali (Retd.), Former Judge of Madras High Court as its Nominee Arbitrator. The respondent has however not responded positively by nominating an Arbitrator on its behalf, despite reminder dated 16.02.2022.

5. Considering the same, it has to be construed that the respondent has forfeited the right to participate in the constitution of the Arbitration



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Tribunal in terms of Clause 16 of the Gas Supply Agreement dated
28.12.2012.

6. Under these circumstances, **Hon'ble Mr.Justice G.M.Akbar Ali (Retd.)**, Former Judge of Madras High Court residing at No.108/64, 2nd Floor, Catholic Centre, Armenian Street, Parrys, Chennai – 600 001, (Mobile No.94450 25151) nominated as the Nominee Arbitrator on behalf of the petitioner is confirmed.

7. Since the respondent has failed to nominate its Nominee Arbitrator, Court is inclined to appoint **Hon'ble Mr.Justice B.Gokuldas (Retd.)**, Former Judge of Madras High Court residing at No.11, Kuppusami Pillai Street, Jesupadam Nager, Guduvancherry, Vandalore Taluk, Chinglepet District – 603 202, (Mobile No.94434 91924) as the Nominee Arbitrator on behalf of the respondent.

8. The respective arbitrators in turn shall nominate/appoint a Presiding Arbitrator and constitute an Arbitral Tribunal to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.



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9. The Arbitral Tribunal shall, after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order touching on limitation.

10. The Arbitral Tribunal shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitral Tribunal and later recover the same from the respondent.

11. Since this Court has appointed the Arbitral Tribunal, it is open to the petitioner as well as the respondent to seek other reliefs under Section



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17 of the Arbitration and Conciliation Act, 1996, before the Arbitral
Tribunal.

12. All the issues relating to merits including limitation shall be decided by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996.

13. This Original Petition stand allowed, leaving the parties to bear their own costs.

12.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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