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Arb.OP(Com.Div.)No.264 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2024

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Arb.OP(Com.Div.) No.264 of 2024

M/s.Som Projects Private Limited,
1201, Millenium Plaza,
Gurugram, Haryana – 122 001,
Rep. by its Authorised Signatory,
Mukul Garg

... Petitioner

Vs.

1. Engineer in Chief,
Integrated HQ of Ministry of Defense (Army),
Kashmir House,
Rajaji Marg,
New Delhi – 110 011.

2. Chief Engineer (FY) Hyderabad,
Opp Parade Ground,
Sardar Patel Road,
Secunderabad (AP) – 500 003.

3. Garrison Engineer (I)(P), FY,
Millitary Engineer Services,
Avadi, Chennai – 600 054.

... Respondents

Prayer: Original Petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking to appoint a Sole arbitrator in place of the earlier Arbitrator from the list of empanelled Arbitrators of Ministry of Defense to decide all the disputes arising out of or in connection with the contract “CA.NO.CE(FY)HYD/AVD/27 OF



2015-16” CONSTRUCTION OF TURRET SHOP AND HULL SHOP WITH SERVICES AT HVF AVADI” dated 05.02.2016, executed between the petitioner and the respondent and to adjudicate on the dispute as per the General Conditions of Contract (I.A.F.W.2249).

For Petitioner : Mr.P.Meghana Nair

For Respondents : Mr.V.Chandrasekaran

ORDER

This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole arbitrator in place of the earlier Arbitrator from the list of empanelled Arbitrators of Ministry of Defense to decide all the disputes arising out of or in connection with the contract “CA.NO.CE(FY)HYD/AVD/27 OF 2015-16” CONSTRUCTION OF TURRET SHOP AND HULL SHOP WITH SERVICES AT HVF AVADI” dated 05.02.2016, executed between the petitioner and the respondent and to adjudicate on the dispute as per the General Conditions of Contract (I.A.F.W.2449)

2. The petitioner states that the second respondent invited a tender for construction of turret shop and hull shop with services at HVF Avadi, and the petitioner was the successful bidder. Subsequently, an agreement was entered between the petitioner and the respondents for the work involved in the tender on



05.02.2016. In all contracts executed by the Military Engineer Services under the Ministry of Defence, the guiding documents which are being used are the General Conditions of Contracts (IAFW 2249) approved by the Ministry of Defence. As per Condition 70 of the General Conditions of Contract (IAFW 2249) in the event of any disputes or differences, arising between the parties, are to be referred to a sole conciliator. The Condition 70 of the the General Conditions of Contract (IAFW 2249) is read as follows:-

70. Arbitration.- All disputes, between the parties to the Contract(other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors



or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.



The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final and binding on both parties to the Contract.”

3. The learned counsel appearing for the petitioner submitted that the petitioner approached the second respondent invoking the arbitration clause and requested the first respondent to appoint a sole arbitrator. Since there was no action, the petitioner approached this Court in Arb.O.P.No.153 of 2022 and this Court by an order dated 07.06.2022 appointed a sole arbitrator. However, the petitioner felt that the arbitrator was favouring the respondent and the same was pointed out to the arbitrator by the petitioner. Hence, the arbitrator has withdrew himself from the arbitration proceedings, as per the proceeding dated 31.08.2023. Therefore, the petitioner filed the present petition for appointment of sole arbitrator in the place of earlier arbitrator.

4. Notice was ordered on the respondents on 19.07.2024 and the learned counsel appearing for the respondents also present before this Court today. Therefore, there is no impediment to proceed with the matter.

5. On perusal of Condition 70 of the General Conditions of Contract



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(IAFW 2249), it is evident that the disputes are required to be resolved through arbitration. The petitioner has also duly invoked the arbitration clause. In view of the failure of the respondent to respond thereto, or took consent to the nominee proposed by the petitioner, the Arbitral Tribunal is required to be constituted in accordance with Section 11 of the Arbitration Act.

6. Therefore, this Court is inclined to appoint an arbitrator from the list of empanelled arbitrators of Ministry of Defense. Accordingly, this petition is allowed by appointing Mr.Arvind Kumar Arora, DG (Pers) (Retd), MES, residing at B-333, Chittaranjan Park, New Delhi -110 019 (Mobile No.:8130588577) as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law. It is open to the Sole Arbitrator to fix his fees and expenses in relation to the arbitral proceedings.

15.10.2024

Neutral citation: Yes/no
Index : Yes/No
Speaking/Non Speaking

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To

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G.K.ILANTHIRAIYAN, J.

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