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Arb.O.P (Com.Div.) No.253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.253 of 2024

M/s.Ourland Engineering Works Pvt Ltd.,
Represented by its Director, Mr.P.S.Sivaguru,
present office Address:
3rd Floor, Atandra Towers
25, Thirumalai Pillai Rd,
T.Nagar, Chennai-600017.

... Petitioner

Vs.

1. The Commissioner,
Tambaram City Municipal Corporation,
No.1, Muthurangam Street,
West Tambaram,
Chennai- 600 045.
2. The Director of Municipal Administration,
Directorate of Municipal Administration,
75, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram,
Chennai- 600028.

... Respondents

Arbitration Original Petition filed under Section 11(6) of the
Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate



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the disputes between the Petitioner and the 1st Respondent in terms of arbitration Agreement dated 17.05.2023 for Tender No:201/2023/E1 dated 24.03.2023 and direct the respondents to pay the costs.

For Petitioner : Mr.S.Girissh

For Respondent : Mr.P.Srinivas (R1)
Ms.Amrithapoonkodi Dinakaran
Government Advocate (R2)

ORDER

This petition has been filed to appoint an Arbitrator to adjudicate the disputes between the Petitioner and the 1st Respondent in terms of arbitration Agreement dated 17.05.2023 for Tender No:201/2023/E1 dated 24.03.2023 and direct the respondents to pay the costs.

2. The learned counsel for the petitioner would submit that the petitioner and the respondents entered into a Contract Agreement dated 17.05.2023 with regard to Tender Document No.201/2023/E1 dated 22.08.2022 for engaging adequate manpower and vehicles for collection and transportation of different types of solid waste in Tambaram City Municipal Corporation. Pursuant to the said agreement, the petitioner carried on the



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Solid Waste Management Operations at Tambaram City Municipal

Corporation from 21.06.2023. Thereafter, disputes arose between the

Petitioner and the Respondents with regard to the payment pertaining to the aforesaid works and the Respondents failed to act as per the Agreement.

Despite attempt being made by the petitioner to resolve the disputes by way of settlement, the Respondent is not coming forward to settle the dues payable to the Petitioner. Hence, a notice under Section 21 of the

Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) was

sent to the Respondents on 12.04.2024, by nominating Mr.R.Venkatesh,

Advocate as its arbitrator and calling upon them to appoint their arbitrators,

as the agreement stipulates constitution of Tribunal with three arbitrators.

Pursuant to which the 1st Respondent vide letter dated 30.04.2024, has nominated Mr.Karthikeyan, Senior Advocate, as the arbitrator. Despite

several reminders, the 2nd Respondent has not taken any steps to appoint the

arbitrator. Hence, the Petitioner has come forward with this Petition seeking

for appointment of arbitrator.



3. Further, the learned counsel for the petitioner would submit that the present dispute is arising out of the Contract Agreement dated 17.05.2023 and the same can be arbitrable in terms of Clause 15.2 of the said agreement, which reads as follows:

"15.2. Arbitration

a) Procedure: Subject to the provisions of clause 15.1, any dispute which is not resolved amicably shall be finally settled by binding arbitration under the Indian arbitration act, 1996 or any amendments or additions thereto. The arbitration shall be by a panel of three arbitrators, one to be appointed by each party and the third to be appointed by the Director of Municipal Administration. The party requiring arbitration shall appoint an arbitrator in writing, inform the other party about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation, the other party fails to appoint its arbitrator, the party seeking appointment of arbitrator may take further steps in accordance with arbitration act. The process of selection of such arbitrators shall be maximum of 30 days. "

By referring the said clause, the present dispute may be referred to Arbitration.

4. The learned counsel for the 1st Respondent would submit that the Tender was floated by the 1st Respondent and the 2nd Respondent is only a formal party. However, he fairly submitted since the dispute pertains to the



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Contract Agreement dated 17.05.2023 with regard to Tender Document No.201/2023/E1 dated 22.08.2022, an arbitrator, to resolve the dispute may be appointed, as the same is arbitrable in terms of Clause 15.2 of the Contract Agreement.

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

6. Considering the submission made by the respondent counsel, this Court is of the view that the present dispute is arising out of the Contract agreement dated 17.05.2023 and the same is arbitrable under Clause 15.2. of the said agreement. Hence, this Court is inclined to appoint 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, Thiruvannamipur, Chennai- 600 041 (Mobile No.9444383139) is appointed as



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sole arbitrator to enter upon reference and adjudicate the disputes *inter se* 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.

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.

8. With the above directions, this Arbitration Original Petition is allowed.

01.08.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
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