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Arb.O.P.(Com.Div.). No. 442 of 2024

C.V.KARTHIKEYAN, J.

This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1990 seeking to constitute an arbitral tribunal of a sole Arbitrator with sitting at Chennai to decide the disputes which had arisen under the Tender Agreement dated 25.01.2016.

2. It had been stated in the petition that the petitioner, a manufacturing company had responded to a proposal of the first respondent, the Secretary to the Government (Handlooms and Textiles Department at Chennai) on 04.05.2015 to provide “Pneumatic Hand Looms” to Handloom Weavers on a estimate cost of Rs.75,000/- of each Pneumatic Hand Looms”. It had been stated that the cost was to be borne by the State Government and by the beneficiary in the ratio 60:40. It was proposed that 100 numbers of Pneumatic Hand Looms” should be provided every year. A total of 300 numbers of Pneumatic Hand Looms” were sought to be supplied over a period of three years. The second respondent, the Director, Department of Handlooms and Textiles at



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Chennai had requested financial assistance on the State Government for contribution of a sum of Rs.135 lakhs and also sought necessary orders to approve the project. This proposal of the first respondent was accepted by the petitioner and accordingly, an approval had been issued called “State Innovation Fund” by G.O.(2D).No. 14 dated 14.10.2015. The terms were that for the year 2015-2016, 100 numbers of Pneumatic Hand Looms should be supplied and for the year 2016-2017 similarly another 100 numbers of Pneumatic Hand Looms should be supplied and again in the year 2017-2018, yet another 100 numbers of Pneumatic Hand Looms should be supplied. The total State Contribution of 60% was Rs.135/- lakhs divided into Rs.45/- lakhs for each year.

3. A tender was called on 09.11.2015 by the third respondent. The petitioner had quoted the lowest price and his quotation was accepted for a sum of Rs.68,775/- including tax for one Pneumatic Hand Loom. A letter of acceptance had been issued on 21.01.2016. The petitioner was directed to remit Security Deposit and execute the agreement. The Agreement was executed on 25.01.2016. A purchase order dated 28.01.2016 was issued and a list of beneficiaries was also



given by the third respondent. A direction was issued that the supply should be made on or before 19.05.2016. The petitioner found that only 17 names were listed as beneficiaries for supply of Pneumatic Hand Loom and 72 names were reflected as beneficiaries for supply of Electronic Jacquard Machines. It had been stated that two types of Pneumatic Hand Loom had been mentioned in the tender schedule but there was no information in the beneficiaries list about which type of Pneumatic Hand Loom had to be supplied to the beneficiaries. It had been therefore contended that there were differences in this issue between the petitioner and the third respondent.

4. The petitioner claims that an assurance was held out that details along with remaining list of beneficiaries would be given. Thereafter, the State Assembly Elections were declared on 05.03.2015 and the Model Code of Conduct came into effect. The petitioner was informed that the supply could be effected after the elections had been completed.



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5. The petitioner was then issued with a Show Cause Notice issued by the second respondent on 22.03.2016 directing him to complete the entire supply by 19.05.2016. It had also been stated that even earlier on 04.03.2016, a Show Cause Notice had been issued which was not received by the petitioner. The petitioner had given an explanation on 29.03.2016. He had sent another letter dated 03.06.2016 seeking to condone the delay in completing the work and had given reasons of the intervening election schedule. The petitioner stated that he had completed the supply of Pneumatic Hand Looms and had obtained acknowledgment, and that 29 Pneumatic Hand Looms were ready for despatch at the factory of the petitioner.

6. A third show cause notice had been issued on 26.07.2016, in which according to the petitioner, the pincode of the address was wrongly mentioned. The tender was cancelled on 26.04.2016. The petitioner was also issued with a Show Cause Notice to blacklist his firm. The firm was also blacklisted for a period of one year.



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7. The petitioner then filed a Writ Petition which also moved forward to be examined by a Division Bench in Writ Appeals filed by both the petitioner and the respondents. So far as the issue of blacklisting was concerned, the Division Bench in the Writ Appeal was of the opinion since the period of blacklist was over, no adjudication was required on the same and the Writ Appeal filed by the petitioner was dismissed. With respect to the Writ Appeal filed by the State, it had been opined that since the agreement contained a clause to refer the disputes to arbitration, the petitioner could approach the appropriate forum seeking appointment of an arbitrator. It was under those circumstances, the petitioner has filed the present Application, taking advantage of Section 11(5) of the Arbitration and Conciliation Act 1996.

8. The learned counsel for the respondent herein had raised a preliminary objection by stating that the petitioner had not issued a notice under Section 21 of the Act and pointed out that in the absence of such a notice, the arbitral proceedings could never formerly commence.



9. The learned counsel for the petitioner however contended that the instant petition had been filed consequent to a direction issued by the Division Bench and that all objections by the respondents could be raised before the learned Arbitrator.

10. When the matter came up for consideration on 04.11.2024, the Court had noticed that there were three issues which could be crystallised as disputes between the parties, namely, the issue of blacklisting, the issue of supply and complaint of non supply or delayed supply of Pneumatic Hand Looms and the claim for damages by the petitioner against the respondent.

11. The learned counsel for the respondent made a fervent plea stating that the respondent is the Department of Handlooms and Textiles and any dent into the finance of the Department of Handlooms and Textiles would cause serious damage and therefore stated that the claim for damages should be an issue which should not be presented for arbitration.



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12. At any rate, every dispute which arises owing to the terms of the agreement entered into between the parties, should be arbitrable in nature and it is the Arbitrator, who has to take a final decision as to the terms of reference under which he enters and the arbitral tribunal is constituted.

13. The issue of notice under Section 21 of the Arbitration and Conciliation Act 1996 would pale into insignificance since the petitioner had come to Court on the basis of a direction given by the Division Bench wherein very specifically it had been stated that the appropriate forum should be approached for “appointment of an Arbitrator”. Both the parties have been at lis before the Writ Court and before the Writ Appellate Court and both are concerned about the fact that the arbitral disputes will have to be resolved only through arbitration and therefore, I hold that non issuance of notice under Section 21 is an issue which, in this case does not go to the root of the matter.

14. The parties can raise all issues before the learned Arbitrator. This Court had directed that the parties could crystalise the terms of



reference and accordingly, the learned counsel for the petitioner had forwarded a few issues. Primarily they related to the cancellation order dated 26.04.2016 issued by the second respondent and about the forfeiture of the security deposit paid by the petitioner. The petitioner also claims an amount to be paid for the machines which had been actually delivered by the petitioner herein. The petitioner also seeks that for the delay, due consideration should be shown for the Model Code of Conduct which had come into play at the time of supply of the machineries.

15. Another issue which had been raised by the petitioner was whether the Show Cause Notice had been served on the petitioner herein. The petitioner also claims that a finding should be given whether the respondents had acted with mala fide to deny payments to the writ petitioner herein.

16. A further perusal of the issues raised by the petitioner would indicate that they could be crystalised into three broad categories, namely, the payments for supply already made, the forfeiture of security



deposit and cancellation of the tender. The issue of delay for supply is a matter of evidence. The issue of mala fide again is a matter of evidence. They need not be crystallised as separate issues but could be answered by the learned Arbitrator while examining whether the respondents were liable to pay for supply already made and were entitled to cancel the tender issued in favour of the petitioner herein and justified in withholding the security deposit. The learned counsel for the respondents further stated that if some of the issues could be resolved through mediation, that possibility could also be explored.

17. The concept of both arbitration and mediation procedure being conducted over various issues raised, is invogue now. Those issues which require evidence could be dealt with by the Arbitrator in a formal manner and again if there are any issue, which could be resolved through mediation, the Arbitrator can very well fall back on the expertise which he has to attempt to mediate the issues between the parties. I would leave these procedure to the wisdom of the Arbitrator to adopt an appropriate method while proceeding with examining the issues.



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18. After getting consent from both the learned counsel for the petitioner and the respondents, in view of the fact that the agreement contains a specific clause to refer disputes to arbitration which had been noted by the Division Bench in the Writ Appeal. I hold that it would only be appropriate to refer the disputes to arbitration.

19. For the sake of completion the clause relating to arbitration is extracted below:-

“17. In case of any dispute arising in this agreement, such dispute shall be referred to the Government of Tamil Nadu who shall be the Arbitrator and the decision of the Government of Tamil Nadu shall be final and binding on the parties.”

20. In view of the above reasoning, by consent of both the learned counsels, Mr.Justice V.Bharathidasan, Former Judge of this Court, No.22, (L-45), 2nd Main Road, Kamaraj Nagar, Thiruvannamipur, Chennai – 600 041, Mobile Nos. 9444383139 & 9445500224, is



appointed as sole arbitrator to enter into reference and examine the disputes between the two parties in accordance with agreement entered into between the parties.

21. The learned Arbitrator may determine his fees in accordance with schedule given to the Arbitration and Conciliation Act 1996. A request is placed before the learned Arbitrator, in view of the statement made by the learned counsel for the respondent that the respondent is the Department of Handlooms and Textiles Department, to also explore the possibility of attempting to mediate some of the issues wherein evidence is strictly not required. I am confident that the parties would co-operate in that regard.

22. In view of the nature of the agreement between the parties, let me not put a time line for completion of the arbitral proceedings but again leave that aspect to the prudence of the learned Arbitrator. The application stands disposed of in accordance with the above terms.

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