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O.A.Nos.752 & 753 of 2023

O.A.Nos.752 & 753 of 2023
& Arb.Appln.No.458 of 2023

KRISHNAN RAMASAMY, J.,

The application in O.A.No.752 of 2023 has been filed for an order of interim injunction restraining the respondent from taking any action, which has the effect of causing the invocation of performance bank guarantees provided under the Concession Agreement dated 03.02.2021.

2. The application in O.A.No.753 of 2023 has been filed for an order of interim injunction restraining the respondent from violating its unconditional undertaking dated 05.07.2023.

3. The application in Arb.Appln.No.458 of 2023 has been filed to direct the respondent to furnish security in the form of two unconditional bank guarantees.



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4. When this matter was taken up for hearing, Mr.Satish Parasaran, learned Senior counsel appearing for the applicant would submit that in the present case, the applicant and the respondent had executed a Term Sheet dated 31.08.2020.

5. Further, he would submit that the present dispute between the parties, which is arising out of the Term Sheet, is arbitrable as per the Clause 23 of the said Term Sheet. Hence, he requests this Court to appoint an Arbitrator to adjudicate the dispute between the parties.

6. In reply, Mr.P.S.Raman, learned Senior counsel appearing for the respondent had also accepted the above submission and agreed for the appointment of an Arbitrator.

7. After discussion, both the learned Senior counsel, in unison, agreed to nominate the Hon'ble Thiru.Justice V.Parthiban, High Court Judge (Retd.), as Arbitrator to adjudicate the present dispute and requested this Court to



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pass appropriate orders.

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8. Heard both the learned Senior counsel for the applicant and the respondent and also perused the materials available on record.

9. In the present case, it appears that the dispute between the parties is arising out of the Term Sheet dated 31.08.2020. Upon perusal of the said Term Sheet, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 23 of the said Term Sheet, which reads as follows:

“23. Jurisdiction

This Term Sheet shall be governed by the laws of India and all disputes arising out of or in connection with this Term Sheet would be referred to and finally resolved by binding arbitration proceedings shall be conducted by a sole Arbitrator, in accordance with the Arbitration and Conciliation Act, 1996, as amended, and the seat and venue of the proceedings shall be Chennai and the language used for the proceedings shall be in English”.



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10. Considering the submissions made by both the learned Senior counsel and also in view of the fact that the dispute between the applicant and the respondent squarely falls within the purview of clause 23 of the Term Sheet dated 31.08.2020, this Court is inclined to appoint the Hon'ble Thiru.Justice V.Parthiban, High Court Judge (Retd.), as Arbitrator, as agreed by the parties.

11. Accordingly, this Court feels it appropriate to pass the following order:

i) **The Hon'ble Thiru.Justice V.Parthiban, Former High Court Judge, residing at No.5069, Z Block, 12th Street, Anna Nagar (West), Chennai 600 040, Mobile No.94440 94401,** is appointed as 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



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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.

iv) The learned Arbitrator shall consider the present application as Section 17 application and accordingly, decide the same in accordance with law. The parties shall address their grievances before the learned Arbitrator for granting of interim orders.

v) The parties are granted liberty to raise all their contentions before the learned Arbitrator.

vi) If any notice was already issued, the date of commencement of Arbitral proceedings would be the date of issuance of the said notice.

vii) If no notice was issued, since this Court has appointed Arbitrator in Section 9 proceedings, by invoking jurisdiction



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under Section 11, the commencement of Arbitral proceedings would be the date of passing of the present order.

12. With the above directions, these applications are disposed of. No cost.

18.06.2024

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