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Arb.OP(Com.Div.)No.392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.10.2024

Coram:

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

Arb.OP(Com.Div.) No.392 of 2024

M/s.Enexio Power Cooling Solutions
India Private Ltd.,
(Formerly GEA Cooling Towers
Technologies (India) Private Ltd.),
Kurios Software Park,
III Floor, Plot No.24,
2nd Cross Street,
Ambattur Industrial Estates,
Chennai 600 058

.. Petitioner

/versus/

M/s.LNV Technology Private Ltd,
5th Floor, Sigapi Aachi Building,
18/3, Rukmani Lakshmipathi Road,
Egmore,
Chennai 600 008

... Respondent

Prayer: Original Petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking to appoint nominee arbitrator on behalf of the respondent herein to adjudicate the disputes between the petitioner and the respondent arising in connection with the purchaser order in LOI/LNV-JKCL-WHRS/439/18-19, dated 26.09.2018, culminating into PO.No.PW18-439, PO/18-19/0373 dated 26.09.2018 in accordance with clause 15.1 contained Annexure VI – Commercial Terms & Conditions appended to the above mentioned purchase order.



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For Petitioner : Mr.D.Ravichander

For Respondent : No appearance

ORDER

This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking to appoint nominee arbitrator on behalf of the respondent herein to adjudicate the disputes between the petitioner and the respondent arising in connection with the purchaser order in LOI/LNV-JKCL-WHRS/439/18-19, dated 26.09.2018, culminating into PO.No.PW18-439, PO/18-19/0373 dated 26.09.2018 in accordance with clause 15.1 contained Annexure VI – Commercial Terms & Conditions appended to the above mentioned purchase order.

2. The petitioner states that for the supply of Air Cooled Condenser package and associated equipment, purchase order was awarded to the petitioner, pursuant to which another purchase order was also issued by the respondent. On completion of all the supplies, the petitioner requested for release of retention of Rs.1,00,00,000/-, for which the respondent stated that the retention amount has been adjusted towards levy of liquidated damages. Therefore, the petitioner issued legal notice dated 06.06.2023, for which also the respondent stated as to liquidated damages. It is relevant to extract the clause 15 of Annexure VI – Commercial Terms & Conditions appended to the above mentioned purchase order hereunder:



15.0 ARBITRATION AND LAW

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15.1 If at any time any controversies, claim(s), relating to and in connection with all or any matter arising out of this Purchase order, either party may give to the other notice in writing of the existence of such controversies, claim(s). disputes(s), or difference and the same shall be referred to the Arbitration of one person if mutually agreed upon between the parties, or of two Arbitrators one to be appointed by each, who, before entering upon the arbitration shall appoint an umpire. The decision of the Arbitrator or the Umpire, as the case may be, shall be final and binding on the parties.

15.2 The said arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act, 1996 and the Rules there under to be read together with all statutory amendments and modifications of the said Act

15.3 The parties hereto shall carry out during the course of the arbitration, as far as practicable, their respective responsibilities under this Order.

15.4 The Proceedings of the Arbitration shall be conducted in Chennai only.

3. As per the above clause, notice was issued by the petitioner dated 16.12.2023 appointing an arbitrator, for which the respondent replied that they are not agreeable and that they will appoint an arbitrator in due course. However, so far, no arbitrator has been appointed.

4. Notice was ordered on the respondent on 27.09.2024. However, the respondent has not engaged any counsel on his behalf or the respondent has not



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appeared in person before this Court today. Therefore, there is no impediment to proceed with the matter.

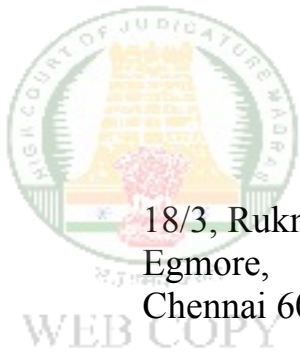
5. On perusal of above clause 15.1, it is evident that the disputes are required to be resolved through arbitration. The petitioner has also duly invoked the arbitration clause. In view of the failure of the respondent to appoint an arbitrator, the Arbitral Tribunal is required to be constituted in accordance with Section 11 of the Arbitration Act.

6. Therefore, this Court is inclined to appoint an arbitrator. Accordingly, this original petition is allowed by appointing Mr.M.Navin Kumar Murthy, having address – T6, 3rd Floor, Singapore Plaza, Linghi Chetty Street, Chennai 600 001 (mobile: 98847 40424) 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.

25.10.2024

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

M/s.LNV Technology Private Ltd,
5th Floor, Sigapi Aachi Building,



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