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Arb.O.P(Com.Div.) No.569 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.569 of 2023

M/s.Bengal Mill Stores Supply Company,
205, Maganlal Chambers,
Baburao Bobde Marg,
Iron Market,
Mumbai – 400 009.

Represented by its POA Holder

Virendra C Doshi,
No.14/8, Shree Hind Co-op HSG.Society Limited,
Duncan Causeway Road,
Sion, Mumbai – 400 022.

... Petitioner

Vs.

BGR Energy Systems Limited,
EED Factory-Panjetty
II-199/171 GNT Road, Panjetty Village,
Ponner Taluk,
Thiruvallur District – 601 204.

India.

Registered Office at
A-5, Pannamgadu Ind Estate,
Ramapuram Taluk,
Sullurpet Taluk,
Nellore District,
Andhra Pradesh – 524 401.

... Respondent



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Prayer: Original Petition is filed under Section 11(5) read with Section 11(4) of the Arbitration and Conciliation (Amendment) Act, 2015 read with Rule 2 of the Appointment of the Arbitrators of Madras High Court Scheme, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Purchase Order No.7100002655 dated 21st January 2020 and conduct Arbitration proceedings to adjudicate upon the said disputes.

For Petitioner : Mr.G.R.Hari

For Respondent : Mr.C.P.Prashanth Gopal

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This petition has been filed under Section 11(5) read with Section 11(4) of the Arbitration and Conciliation (Amendment) Act, 2015 read with Rule 2 of the Appointment of the Arbitrators of Madras High Court Scheme, 1996, for appointment of the Sole Arbitrator in terms of the Purchase Order dated 21.01.2020. The said Purchase Order contemplates an Arbitration Clause for resolving the dispute between the parties. It reads as under:-



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“15.Arbitration:

All disputes arising in connection with this agreement/P.O which cannot be settled by mutual negotiations shall be finally settled under the rules of Indian Arbitration & Conciliation Act, 1996 and as amended from time to time. The venue of the Arbitration shall be Chennai.”

3. The petitioner has also issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 27.01.2023. Despite the same, the respondent has failed to respond to the notice issued by the petitioner.

4. As there is an embargo under the provisions of the Arbitration and Conciliation Act, 1996, for appointing an Arbitrator by the petitioner itself in terms of the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516, Court is of the view, there is no impediment for the Court to appointing Arbitrator as the respondent has admittedly forfeited the right to participate in the procedure prescribed for appointment of the Arbitrator.

5. Considering the same, **Mr.Niranjan Rajagopalan, Advocate,**



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having Office at III-A, High Court Chambers, Madras High Court, Chennai – 600 104, Mobile No.93818 03616, is appointed as the Sole Arbitrator to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties.

6. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

7. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from



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the respondent.

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8. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

9. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

13.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

arb

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