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Arb.OP.(comdiv) No.433 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

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

Arb.O.P.(Comm.Div.) No.433 of 2024

Westart Communications India Private Limited,
MF-7, CIPET Hospital Road,
Ekkatuthangal, Chennai – 32.
Rep. By its General Manager/
Authorized Signatory Mr.C.Ponappan .. Petitioner

-VS-

- 1.The Greater Chennai Corporation,
Rep. By its Principal Secretary/Commissioner,
Chennai – 3.
- 2.The Superintending Engineer,
Solid Waste Management Department,
Greater Chennai Corporation,
Chennai – 3.
- 3.The Director,
Project Management Consultant,
Centre of Environmental Studies,
Anna University, Chennai – 25. .. Respondents

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondents under the agreement dated 26.02.2021.



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For Petitioner : Mr.Rahul Balaji
For R1 & R2 : Mrs.P.T.Ramadevi,
Standing Counsel

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. According to the petitioner, the Greater Chennai Corporation floated a tender for reclamation of Perungudi Dumping Yard through Bio-mining of the legacy wastes. In the bid, the petitioner was adjudged as the successful bidder and accordingly, letter of award was issued on 19.02.2021 in favour of the petitioner, followed by an agreement dated 26.02.2021 for Bio-mining of the project Site – Package-1 entered into with the Greater Chennai Corporation.

3. There seems to be a dispute between the petitioner and the respondents arising out of the agreement dated 26.02.2021. There is an arbitration clause available in the agreement dated 26.02.2021, which is extracted hereunder:-



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“24.3.1. Any dispute which is not resolved amicably by conciliation as provided in Clause 24.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 24.3.2. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English. The Arbitration shall be in institutional mode and would not be adhoc, in any case, and the online mode of dispute resolution may also be resorted to as per the latest notification of Ministry of Law & Justice, Government of India.

24.3.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with Section 11 of the Arbitration and Conciliation Act, 1996, and subsequent amendments thereof.”



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4. The petitioner had invoked the arbitration in accordance with the arbitration clause found in the agreement dated 26.02.2021 by sending a notice to the respondents on 04.07.2024. Although the petitioner suggested name of the arbitrator, the respondents have neither sent a reply nor have they suggested any name for appointment of an arbitrator. Since there is a valid arbitral agreement between the parties and that there has been no consensus between the parties for appointment of an arbitrator, this Court will have to necessarily appoint an arbitrator. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints the Hon'ble Mr.Justice N.Kirubakaran, former Judge of the Madras High Court, residing at No.36, 2nd cross street, Rayala Nagar, Ramapuram, Chennai-89, Mobile No.9445025454, as the sole arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the agreement dated 26.02.2021.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.



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(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the Arbitrator.

17.10.2024

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G.K.ILANTHIRAIYAN, J.

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