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Arb.O.P.No.559 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.559 of 2023

NLC India Limited
Corporate Office, Block-1
Neyveli 607 801,
Rep.by its General Manager,
Township Administration,
R.Ashok Kumar

... Petitioner

VS.

M/s.R.R.Constructions
A Partnership Firm
Rep.by its Managing Partner
R.Raja Mohan

... Respondent

Prayer: Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 as amended Act, 2015, read with Rule 2 of the Appointment of Arbitrators, praying to appoint a sole arbitrator, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes between the petitioner and the respondent arising out of the Agreement and direct the respondent to pay the costs of these proceedings and/or pass any further order.



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For Petitioner : Mr.Kishore Balasubramanian

For Respondent : No Appearance

ORDER

This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996.

2. Despite notice being taken out on the respondents, the respondents have failed to enter appearance either in person or through a counsel.

3. The dispute between the petitioner and the respondent is arbitrable in terms of Agreement dated 10.07.2020. Relevant clause reads as under:-

27.01 Dispute Resolution :-

The successful bidder only can invoke Conciliation/Arbitration, that too only after award of Contract. Other bidders cannot invoke Conciliation /Arbitration at any stage.

b) Arbitration :

If the dispute is not resolved amicably through conciliation, then the same shall be referred to Arbitration.



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1. Arbitration shall be as per Arbitration and Conciliation Act, 1996, which shall be applicable only for the dispute(s) involving claims from 25 lakhs to 20 Crores.
2. Dispute(s) involving claims below 25 lakhs are subject to the jurisdiction of the respective Civil Court having jurisdiction over the place of works/supply/service.

Dispute(s) involving claims above 20 Crores are subject to the exclusive jurisdiction of the Court situated at Chennai.

3. Setting aside the dispute to be resolved, the work shall be proceeded with.
4. For the sum of Provisional Claim & Provisional Counter Claim.
 - * Upto Rs.3.0 Crores: One Arbitrator
 - * More than Rs.3.0 Crores : Three Arbitrators.
5. The Provisional Claim/Counter claim amount shall be indicated by the respective parties while initiating /concurring for Arbitration.
6. However, number of Arbitrators will not be modified, even if the sum of Actual Claim and Actual Counter Claim amount vary from the sum of Provisional Claim and Counter Claim amounts.
7. The Sole Arbitrator to be appointed for the dispute with sum of Provisional Claim & Provisional Counter Claim upto Rs.3.0 crores, will be appointed by NLCIL.



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8. For the disputes with sum of Provisional Claim & Provisional Counter Claim more than Rs.3.0 crores: The Arbitration shall be conducted by 3 (Three) Arbitrators, one each nominated by each party and the third arbitrator appointed by both the arbitrators.
9. The Arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 and its Amendment, if any, issued from time to time.
- 28.4 The Venue of the Arbitration shall be Chennai of Neyveli.
- 28.5 The Arbitrators shall publish a speaking award which shall be binding on both the parties. The party in whose favour the award is passed, shall be entitled to recover the entire costs of arbitration from the other party. The arbitrators shall indicate the above clearly, in their award.
- 28.6 In case of Conciliation/Arbitration invoked with respect to certain disputes, payment to the contractor can be released for the items which are not under the referred Conciliation/Arbitration.
- 28.7 The Civil Courts having ordinary original civil jurisdiction over Neyveli shall alone have exclusive jurisdiction in regard to claim in respect of this contract/work order of whatever nature.
4. The petitioner has issued several notices to the respondent and



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called upon him to pay the amount due under the Agreement. The petitioner has also issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 24.01.2023 whereby the petitioner has invoked Arbitration Clause in the aforesaid Agreement dated 10.07.2020, which has been extracted supra.

5. It appears that the petitioner has also nominated on the Hon'ble Mr.Justice K.K.Balu. Member of the Company Law Board as sole Arbitrator. It also appears that the respondent was also represented by Managing Partner. The learned Arbitrator has subsequently withdrawn from the arbitration proceedings in the light of the decision of the Hon'ble Supreme Court in *Perkins Eastman* case. Pursuant to which, the petitioner has issued another notice to the respondent dated 24.08.2023, wherein the petitioner had nominated Mr.G.M.Ramamurthy, (Retd.) Executive Director of Law /IDBI Bank, as a neutral and independent sole arbitrator to adjudicate the dispute between the parties and called upon the respondent to confirm the said nomination/appointment within a period not exceeding thirty days from the date of receipt of the said notice. The respondent has



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not replied to the aforesaid notice dated 24.08.2023. Therefore, it is construed that the respondent deemed to have forfeited the right to participate in the appointment of Arbitrator Agreement dated 10.07.2020.

6. Considering the fact that Mr.Justice K.K.Balu had nominated entered appearance earlier had refused in Court, Court is inclined to appoint **Mr.T.Saikrishnan, (Cell No.98402 29542)** , residing at Flat L, Bhagyam Apartments, 92, P.T.Rajan Salai, IV Floor, K.K.Nagar, Chennai 600 078, as a sole Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

7. 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 29-A of the Arbitration and Conciliation Act, 1996, without getting



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influenced by any of the observations made by this Court in this order.

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8. 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 remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

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

10. 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.

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

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