IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE TWENTIETH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

HONOURABLE SRI DHIRAJ SINGH THAKUR, THE CHIEF JUSTICE

ARBITRATION APPLICATION NO: 40 OF 2023

Between:

M/s.Sarada Roadways, (A Partnership Firm Regd.No.2152 of 1984) Rep by its Managing Partner, Sri Velagapudi Syamala Rao, S/o.Seetaramaiah, aged 57, Door No.13-8/1, New No.10-164, Done Atukur, Nidamanuru Post, Vijayawada Rural Mandal, Vijayawada.

...Applicant

AND

The Visakhapatnam Metropolitan Region Development Authority (VMRDA), [Formerly Visakhapatnam Urban Development Authority(VUDA)] Rep. by its Metropolitan Commissioner, 8th Floor, Udyoga Bhavanam, Siripuram Circle, Visakhapatnam.

...Respondent

Arbitration Application filed under Sections 11 (5) & (6) of Arbitration and Conciliation Act, 1996 read with Scheme for Appointment of Arbitrators as framed by the High Court, at Amaravati praying that the High Court may be pleased to appoint an Arbitrator to resolve the disputes between the applicant and the respondent as provided in Article No.13 of the Build, Construction and Management Agreement dated 27-03-2005 and Clause No.8 of the Licence Agreement dated 27-03-2005.

Counsel for the Petitioner :Sri G V R Choudary

Counsel for the Respondent : Sri V SURYA KIRAN KUMAR (SC FOR VMRDA and MUDA)

The Court made the following:

APHC010321072023

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench
Sr.No:- 90
[3441]

ARBITRATION APPLICATION NO: 40 of 2023

M/s. Sarada Roadways ...Applicant

Vs.

The Visakhapatnam Metropolitan Region Development Authority VMRDA ...Respondent

****

Advocate for Applicant: Mr. G.V.R.Choudary

Advocate for Respondent: None

CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR

DATE : 20-2-2025

P C :

This is an application filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996, (for short, "the Act of 1996") seeking the appointment of an arbitrator for purposes of adjudicating the disputes arising out of and in connection with License Agreement, dated 27.03.2005.

Briefly stated the material facts are as under:

2. The petitioner claims to be a firm who was declared as a successful bidder for establishing a circular train on Kailasagiri Hills at Visakhapatnam, under the Build-Operate-Transfer (BOT) scheme. It is stated that the Visakhapatnam Metropolitan Region Development Authority (VMRDA) and the petitioner entered into a Build, Construction and Management Agreement as also a License Agreement, both dated 27.03.2005. which were registered on

03.05.2005, with the Joint Sub-Registrar, Visakhapatnam. According to the Agreement, the petitioner was permitted to operate the train for a period of 22 years, starting from 04.05.2007 till 03.05.2029.

The petitioner's case is that it had successfully completed the project as per the terms and conditions of the Agreement and was also operating the project successfully. However, it is stated that the operation of the circular train was hampered due to the political disturbances, strikes during bifurcation of the State during the period 2012 to 2014, as also due to Hud-Hud Cyclone in 2014-15 and the Covid pandemic calamity during 2020 to 2022.

It is stated that the petitioner incurred revenue loss which was supposed to be compensated by the respondent, in accordance with the terms and conditions of the license. Apart from this it is stated that amounts are due and payable to the petitioner on account of free passes that were availed during the said period.

Not only this, the petitioner claims that instead of compensating the petitioner, license fee and other charges were sought to be recovered even during the period of the Cyclone Hud-Hud and the Covid pandemic.

In that background, it is stated that an amount of Rs.2,45,67,671/- was claimed by the respondent as Annual Development Premium under different heads, by way of communication, dated 23.12.2022.

It is stated that disputes having arisen between the parties the same are sought to be resolved through the mechanism of arbitration, in accordance with Clause 8 of the License Agreement, dated 27.03.2005, which envisages as under:

> *"8. **Arbitration:***
>
> *(a) Any dispute or difference or controversy of any nature or any breach of the terms and conditions herein contained which may arise out of or in relation to or in connection with these presents or any document to be executed in pursuance of the provisions herein or with regard to any right, liability and commission or omission of the other party or any interpretation of any of the clauses herein or termination of the Agreement between the parties including claims to seek redress or to ascertain any right under the applicable laws shall be referred by the parties to a Sole Arbitrator to be appointed by the Parties jointly and the arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or amendment or re-enactment thereof of the time being in force. In the absence of mutual agreement, such arbitrator (s) shall be appointed as per provisions of the said Act. The arbitration shall be held and the Award to be made in English Language. The place of the proceedings shall be in Visakhapatnam. The Arbitration award shall be a speaking Award and the appropriate court In Visakhapatnam shall have the jurisdiction to entertain any application or other proceedings in respect of anything arising under this Agreement and any award or awards made by the Arbitrator shall be filed in the concerned court in City of Visakhapatnam.*

(b) All the parties shall perform their obligations during the pendency of the Arbitration and cannot exercise any remedies that may arise by virtue of the matters in the dispute. The award of the Arbitrators appointed as above shall be conclusive and binding on the parties."

3. Objections have been filed by the respondents, questioning the jurisdiction of this Court to entertain the present petition. It is stated that according to Clause 13.2 of the Agreement, dated 27.03.2005, which was an Agreement entered between the parties, named as Build, Construction and Management Agreement, it is only the Courts at Hyderabad would have the jurisdiction for settlement of the disputes.

4. Learned counsel for the petitioner, however, states that the petitioner is not at all invoking the arbitration clause as was contained in the Agreement dated 27.03.2005, which was pertaining to Build, Construction and Management of the project, but was only invoking the arbitration Clause 8 of the License Agreement, dated 27.03.2005.

5. On a perusal of the notice invoking the arbitration clause under Section 21 of the Act of 1996, dated 15.10.2021, it can be seen that the petitioner had sought to have the matter settled through arbitration Clause 8 of the License Agreement, dated 27.03.2005, which did not elicit any response at all.

6. As per Clause 8 of the License Agreement, dated 27.03.2005, this Court certainly would have the jurisdiction to entertain the present application and refer the matter for adjudication by an arbitrator.

7. Be that as it may, the present application is allowed. Justice U. Durga Prasad Rao, former Judge of the High Court of Andhra Pradesh, is appointed as an arbitrator, who shall enter upon the reference and adjudicate upon the disputes. The parties shall be free to file detailed claims and counter-claims before the learned Arbitrator, who shall render the Award within the prescribed statutory period. The learned Arbitrator shall also be entitled to claim the fee in consultation with the parties, keeping in view the provisions of the Fourth Schedule of the Arbitration and Conciliation Act, 1996. There shall be no order as to costs.

Pending miscellaneous applications, if any, in this petition, shall stand closed.

A copy of this order be communicated to the learned Arbitrator on the address mentioned herein below:

Justice U. Durga Prasad Rao,
Flat No.505, 5th Floor, Bhuvanavijayam Aparatment,
Near HDFC Bank, Tadepalli Municipality,
Tadepalli, Guntur, Andhra Pradesh – 522 501
Mobile No: 9440405013

Sd/- E KAMESWARA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Sri Justice U.Durga Prasad Rao, former Judge of the High Court of Andhra Pradesh, R/o.Flat No.505, 5th Floor, Bhuvanavijayam Apartment, Near HDFC Bank, Tadepalli Municipality, Tadepalli, Guntur-522 501.Mobile No.9440405013 **(along with a copy of Arbitration Application Affidavit and all material papers filed along with Arbitration Application)**

2. The Registrar (Judicial), High Court of Andhra Pradesh, Amaravati.
3. One CC to Sri G V R Choudary Advocate [OPUC]
4. One CC to Sri V Surya Kiran Kumar (SC FOR VMRDA and MUDA) [OPUC]
5. The Metropolitan Commissioner, Visakhapatnam Metropolitan Region Development Authority (VMRDA), [Formerly Visakhapatnam Urban Development Authority(VUDA)], 8th Floor, Udyoga Bhavanam, Siripuram Circle, Visakhapatnam.
6. The Section Officer, O.S. Section, High Court of Andhra Pradesh at Amaravati.
7. **Three CD Copies**

BSV
srcc

HIGH COURT

DATED:20/02/2025

ORDER

ARBAPPL.No.40 of 2023



ALLOWING THE ARBITRATION APPLICATION