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Arb.O.P.(Com. Div.) No.194 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2025

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.194 of 2025

Malar Energy and Infrastructure Pvt. Ltd.,
Rep. by its Authorised Signatory,
Mr. R.R. Gopaljee,
57, First Floor, Pantheon Road, Egmore,
Chennai - 600 008.

... Petitioner

Vs.

Nuclear Power Corporation of India Ltd.,
Rep. by its Chief Engineer (Civil-Main Plant),
Kudankulam Nuclear Power Project,
Kudankulam - 627 106.

... Respondent

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator and this original petition would lie before the Commercial Division of this Court under Section 2(1) (c) (x) and (xiii) and a Court fee of Rs.50/- is affixed as per Article 11 Schedule II of the Tamil Nadu Court Fees and Suits Valuation Act.

For Petitioner : Kaushik N. Sharma

For Respondent : V. Vijay Shankar



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ORDER

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

2. There seems to be a dispute between the petitioner and the respondent arising out of the work order dated 31-03-2017. Admittedly, the said work order contains an arbitration clause. Earlier, the petitioner had initiated arbitration in accordance with the arbitration clause. An arbitrator was also appointed by the respondent. The arbitrator appointed by the respondent had acted upon the reference and was adjudicating the dispute between the parties and an objection was raised by the petitioner based on the Judgment rendered by the Honorable Supreme Court in the case of **Perkins Eastman Architects Dpc vs Hscc (India) Limited** that an arbitrator cannot be unilaterally appointed by any of the parties to the dispute. In view of the said objection, the Arbitrator recused himself from the arbitration through his order dated 03-02-2020.

3. Thereafter, the petitioner claims that in view of the CIRP proceedings pending against the petitioner before the NCLT, Chennai, they



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could not take steps to appoint a fresh Arbitrator. According to the petitioner, the CIRP proceedings pending against the petitioner was dropped only on 24-11-2024. According to the petitioner, only thereafter, they were in a position to file a petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court. According to the petitioner, there is no delay on their part to file this petition under Section 11 of the Arbitration and Conciliation Act.

4. However, counter has been filed by the Respondent before this Court, raising the following objections:

a. Pendency of CIRP proceedings cannot prevent the petitioner from filing a petition under Section 11 of the Arbitration and Conciliation Act, 1996. According to the Respondent, since no coercive steps were taken against the petitioner in Section 11 petition, the petitioner could have filed this petition within the period of limitation. According to the Respondent, this petition is barred by the law of limitation;

b) The other objection raised by the respondent is that the petitioner was participating in the earlier arbitration and in fact, only on the petitioner's request, an arbitrator was appointed by the respondent,



therefore, they cannot file this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an arbitrator by this Court.

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5. The objections raised by the respondent cannot be decided in this petition when there is no conclusive evidence to establish that the claim of the petitioner is hopelessly barred by the law of limitation. The petitioner has also given reasons before this Court as to why this petition has been filed at this belated stage. The petitioner has also claimed that only due to the fact that CIRP proceedings were pending against the petitioner before the NCLT, Chennai, they were unable to file this petition earlier. Since sufficient reasons have been given by the petitioner for not filing this petition earlier, this Court leaves it open for the Arbitrator to decide with regard to the objections raised by the respondent in this petition through their counter.

6. While deciding an application under Section 11 of the Arbitration and Conciliation Act, this Court will have to see only the *prima facie* existence of the arbitration clause in the contract, which is the subject matter



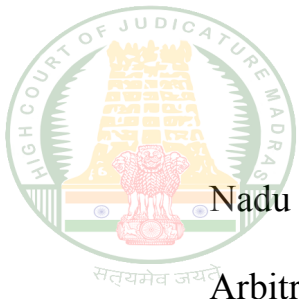
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of dispute between the parties. Admittedly in the Work Order dated 13-03-2017, there exists an arbitration clause and the same is also not disputed by the respondent through their counter filed before this Court.

7. While that be so, and that too when the issues contended by the respondent cannot be adjudicated in this petition under Section 11 of the Arbitration and Conciliation Act, 1996, this Court has to necessarily appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. However, it is made clear that the respondents are granted liberty to raise all objections including the objections, which have been raised before this Court through their counter either by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996 or through a counter filed in the main arbitral claim made by the petitioner before the arbitrator.

8. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) Hon'ble Mr. Justice S. Vaidyanathan, Former Chief Justice, High Court of Meghalaya, who is having address at No.2A, 2nd Floor, River Dale Apartments, 14/27, 2nd Avenue, Harrington Road, Chetpet, Chennai, Tamil



Nadu - 600 031 (Mobile No.98405 17862) is appointed as the sole

Arbitrator to decide the dispute between the petitioner and the respondent

arising out of the work order dated 31-03-2017;

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;

(c) Both the parties shall equally share the arbitrator's fees;

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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