

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**ARBITRATION APPLICATION No.139 OF 2022**

**Between:**

ASR Engineering & Projects Limited

... **Applicant**

**And**

Engineering Projects India Limited

... **Respondent**

**JUDGMENT PRONOUNCED ON: 03.06.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

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**MRS.SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****ARBITRATION APPLICATION No.139 OF 2022****% 03.06.2024****Between:**

# ASR Engineering &amp; Projects Limited

... **Applicant****And**

\$ Engineering Projects India Limited

... **Respondent**

&lt; Gist:

&gt; Head Note:

**! Counsel for the Applicant:** Sri G.Bupesh**^ Counsel for Respondent :** Sri K.Srinivasa Rao

? Cases Referred:

- (i) (2011) SCC Online SC 860
- (ii) 2014 SCC Online Del 6602
- (iii) (2009) 2 SCC 55
- (iv) 2014 SCC Online Del 6602
- (v) 1994 SCC Online Del 563
- (vi) 2018 SCC Online Del 7996
- (vii) 2018 SCC Online Del 7158
- (viii) 2017 SCC Online Del 8989
- (ix) 1978 SCC Online Del 180
- (x) ARB.P-204/2021
- (xi) (2015) 13 SCC 610
- (xii) (2020) SCC Online Bom 693
- (xiii) (2021) EWHC 268 (Comm)

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA****ARBITRATION APPLICATION No.139 OF 2022****ORDER:**

Heard the learned counsel Sri G.Bupesh, appearing on behalf of the applicant and the learned counsel Sri K.Srinivasa Rao, appearing on behalf of the respondent.

2. **The applicant approached the court seeking prayer as under:**

"...(i) To appoint a Sole Arbitrator to adjudicate and resolve the disputes between the Applicant and Respondent that pertain to the violation of the Pre-Tender Tie-Up Agreement dated 28.11.2008; (ii) To award costs of the application and pass.."

3. **PERUSED THE RECORD:**

A) **Relevant portion of the Legal notice dated 18.09.2021 issued to the respondent by the petitioner, para Nos. 8 to 16, read as under:**

8. In pursuance of the Pre-Tender Tie-Up Agreement Dt:28-11-2008, you participated in the bid floated by KUWSDB and you stood as successful bidder and accordingly

a Tender Agreement Dt: 19-1-2009 is entered into. My Client being the Pre-Tender Tie- Up Agreement holder with you, sought for a copy of the Tender Document vide its Request Dt:11-8-2008 and accordingly a copy of the same is furnished by you. The Tender Agreement Dt:19-1-2009 is preceded by a Letter of Acceptance Dt:5-1-2009 between you and KUWSDB.

**9.** In pursuance of the said Letter of Acceptance, my Client furnished Bank Guarantees to you and out of the Bank Guarantees furnished, a Bank Guarantee for an amount of Rs.62,74,520.00 is already encashed by you.

**10.** There was various other correspondence between you and my Client discussing the lacunae on behalf of the principal Contractor and yourself establishing the fact that the delay in completing the Project is not on account of my Client and that accordingly, the Project and the timings contemplated were extended from time to time.

**11.** My Client also states that vide Office Memorandum dated 12-11-2020, the Government of India, through Ministry of Finance, issued directions as per Rule 171 of General Financial Rules, 2017, directed to reduce the Performance Security from existing 5%-10% to 3% of the Value of the Contract. And that there will be no subsequent increase in Performance Security even beyond 31-12-2021. Despite the direction from the Government of India, to continue to hold

Performance Bank Guarantee for 6% of the value of the Project, which is exfacie illegal.

**12.** That, my Client also states that despite not reducing the value of the Performance Bank Guarantee, you went ahead and issued a Letter dated 25-8-2021 threatening to terminate the Contract on failure to complete the entire work within 15 days. The said Letter was challenged by my Client along with an Injunction against invocation of Bank Guarantee furnished towards Performance Security.

**13.** That, the action of not reducing the value of the Bank Guarantee and the Letter threatening to terminate the Contract constitute a dispute, which is arbitrable in nature.

**14.** Having agreed upon Arbitration Clause, having seat of Arbitration at Hyderabad, my Client is left with no other alternative, but to invoke Arbitration Clause contained in Annexure 3 to Notice Inviting Tender Dated 22-7-2008 and Clause 43 of Pre-Tender Tie-Up Agreement Dated 28-11-2008.

**15.** That, my Client has tried to negotiate and tried to arrive at an amicable settlement as per Clause 41 of Pre-Tender Tie-Up Agreement Dated 28-11-2008 and the said efforts failed miserably. Further, as per Annexure to Notice Inviting Tender, the dispute shall be referred to Sole Arbitration of the Chairman and Managing Director of EPIL. I am advised to state that the Employee of your Company is prohibited from

acting as an Arbitrator and as such, the said Clause seeking Arbitration to the extent that CMD shall be the Sole Arbitrator has become redundant and un-enforceable.

**16.** For the foregoing reasons and in view of the disputes above stated, my Client hereby nominates Mr. P PRASAD, Retd. Judge, G2, Pruthvisagar Apartments, Lower Tank Bund, Hyderabad 500 080, Telangana, India, as the Sole Arbitrator to preside over the disputes between you and my Client. You may confirm the appointment of the said Arbitrator within 15 days from the date of receipt of this Notice, failing which my Client shall be constrained to seek appropriate proceedings seeking to appoint Arbitrator through process of Court."

**B) Counter affidavit filed on behalf of the respondent para Nos.16, 17 and 18, read as under:**

"16. In reply to averments made in Para Nos.21 are not true and correct but it is blatant lie as this Respondent sent reply notice which is filed herewith by registered post on 05.10.2021 to the applicant's counsel from whom this Respondent received notice dated 18.09.2021, which abundantly clear that the applicant has not approached this Hon'ble court with clean hands, hence on this ground alone the present petition is liable to dismissed with costs.

17. That in reply to Para Nos.22 and 24 of the statement under Annexure - I of application the Applicant has not

extinguished the remedy provided in Clause No.41 of the Pre-Tender Tie-Up Agreement read with Annexure-III (Conciliation & Arbitration Clause). The Applicant and Respondent decided to negotiate the issue as requested by M/s. ASREPL vide their notice dated 18.09.2022, EPI had instructed the Applicant to attend meeting for amicable settlement on or before 14.10.2021 as per the contract conditions at SRO-Chennai vide our letter No. EPI/KLR/612/002 dated 08.10.2021. M/s. ASREPL had requested to postpone the meeting because of Dussehra Festival vide their letter no. ASR/EPIL/KOLAR/2021- 22/125 dated 11.10.2021. Accordingly, meeting was scheduled on 25.10.2021 (Email correspondence enclosed). The meeting has been held with Mr.Raghava Reddy, Director, M/s.ASR EPL to resolve the issues.

18. As decision taken during the meeting, M/s. ASREPL has submitted their RA Bill statement through email on 28.10.2021 and due to lack of details/clarity in their statement, EPI have provided detailed reconciliation of the RA Bill statement since beginning of the project through email dated 04.12.2021 and vide email dated 20.12.2021, EPI instructed to attend meeting on 27.12.2021 & 28.12.2021 for finalization of the same. However, M/s. ASREPL not interested to attend meeting to resolve the issues evidencing the email correspondences dated 20.12.2021, 23.12.2021, 05.01.2022, 11.01.2022, 21.01.2022 & 22.01.2022. That the Applicant have not invoked and exercised its right to Conciliation to

settle the disputes amicably though this Respondent arranged meeting to dispute if any vide its letter dated 08.10.2021. As such the Applicant is not entitled to invoke clause of Arbitration to resolve the alleged dispute straight away without exhausting Conciliation proceedings as provided under Clause No.41 of the Pre-Tender Tie-Up Agreement read with Annexure-III(Conciliation & Arbitration Clause)."

**C) Rejoinder filed on behalf of the applicant, in particular, para Nos. 3 and 4, read as under:**

"3. It is submitted in reply to the averments made in para nos.17 and 18 that the Applicant has not exhausted the remedy provided in Clause 41 of the Pre-tender Tie-Up Agreement, it is submitted that the Arbitration can be invoked only in the event the parties fail to reach an amicable settlement. **In this regard, it is submitted that the Applicant had requested the Respondent on multiple occasions vide emails correspondences dated 20.12.2021, 23.12.2021, 05.01.2022, 11.01.2022 and 21.01.2022 for an amicable settlement. Further, the representative of the Applicant had visited the Office of the Respondent at Bangalore for reconciliation of accounts as part of the amicable settlement, but no information was provided to him. The same has also been communicated by the Applicant to the Respondent vide email dated 11.01.2022. As there was**

**no response from the Respondent herein inspite of the multiple requests for amicable settlement, the Applicant herein was constrained to file the present application before this Hon'ble Court.**

4. It is submitted that the Respondent having deliberately delayed the proceedings, cannot plead the violation of Clause 41 of the Pre-tender Tie-Up Agreement. It is also pertinent to mention herein that the Respondent does not dispute the existence of the arbitration agreement, nor the disputes between the parties, including the requirement for adjudication of disputes. As such, the present application maybe allowed by this Hon'ble Court."

4. **The case of the Applicant as per the contents of the Memorandum of Arbitration Application filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, read with Scheme for appointment of Arbitrators, 2000, is as follows:**

i) The Karnataka Water Supply and Drainage Board vide their letter/Tender Notification No.KWB/TEC/Kolar-Bangarpet/Malur/UIDSSMT/TND-01/2584/2007-08, dated 05.12.2007 invited Tenders for "Combined Water Supply Scheme to Kolar City, Bangarpet and Malur Towns under Urban Infrastructure

Development Scheme for Small and Medium Towns (UIDSSMT). The said Tenders included the work of providing and laying of MS Rising Mains, providing and laying of DI Feeder Mains, construction of WTP, OHT, providing and laying of DI and PVC Distribution Network.

ii) It is further the case of the applicant that the respondents herein intended to participate in the said Tender and had accordingly called for various sub contractors to be associated with it for the project. The respondent vide various letters and Tender enquiries dated 22.07.2008, 11.08.2008, 29.08.2008 and Corrigendum dated 04.10.2008 and the applicant vide its offer and request letters dated 11.08.2008, 26.08.2008, 01.09.2008 and 08.10.2008 exchanged and discussed the scope of work, modalities etc., and thereafter entered into a Pre-Tender Tie-up Agreement dated 28.11.2008. As per the said Pre-Tender Tie-up Agreement dated 28.11.2008, the respondent shall act as the "Main Contractor", and the applicant shall be the "Sub-Contractor" of the respondent for the execution of the aforementioned works, and in pursuance of the said Pre-Tender Tie-up Agreement dated 28.11.2008, the respondent participated in

the bid floated by the KUWSDB and the respondent stood as the successful bidder and accordingly, a tender agreement dated 19.01.2009 was entered into. The Tender Agreement dated 19.01.2009 between the KUWSDB and the respondent is preceded by a letter of Acceptance, dated 05.01.2009 between the KUWSDB and the respondent. As per the letter of acceptance, the total value of the project is declared as 88,88,78,117.10/- and the same was accordingly approved. The respondent in turn issued letter of intent to the applicant for the said work vide its letter dated 08.01.2009. The applicant furnished two bank guarantees to the respondent, one Bank Guarantee for an amount of Rs.62,74,520/- and another Bank Guarantee for 6% of the project value was furnished vide BG No.2657BG0252009 dated 22.01.2009 for an amount of Rs.5,33,33,000.00. In pursuance of the said letter of intent, a work order is issued on 17.03.2009 to the applicant by indicating the start date of work to be 19.01.2009 and directed to the Project to be completed by 18.01.2011. The value as per the tender and as per the letter of intent was quantified in terms of the Bill of Quantities (BOQ) at Rs.83,85,57,629/- and later was reduced to Rs.75,77,62,000/-. The completion of the project within the agreed

24 months period due to various reasons proved to be impractical and accordingly, the completion period was extended from time to time.

iii) It is further the case of the applicant that to the utter shock and surprise of the applicant, the respondent issued a letter dated 25.08.2021 directing the applicant to complete the entire works within a period of 15 days failing which to terminate the contract. To the said letter dated 25.08.2021 the applicant replied vide Reply dated 31.08.2021 and brought to the notice of the respondent that 95% of the work is already completed and the balance works are pending only on account of non-availability of clearances. It was also brought to their notice that GST invoices were raised from July 2017 and requested for GST Payment and the same is yet to be released by the respondents. Various other reasons for non completion of balance 5% of work was also brought to the notice of the respondent. Aggrieved by the letter dated 25.08.2021 issued to the applicant, the applicant filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, vide COP No.47 of 2021 on the file of the learned Special Court for Trial and Disposal of Commercial Disputes, City Civil Court at Hyderabad

and the applicant obtained an ad-interim injunction on 06.09.2021 against the respondent not to invoke the bank guarantee, the said interim order however was vacated on 02.03.2022. The applicant made fervent attempts to negotiate with the respondent and arrive at an amicable settlement as per Clause 41 of the Pre-Tender Tie-up Agreement dated 28.11.2008 and its efforts were not fruitful as the respondent terminated the Agreement vide letter EPI/KLR/612/002, dated 09.09.2021. On 18.09.2021 in view of the fact that the efforts of the applicant to negotiate with the respondent to arrive at an amicable settlement failed, on 18.09.2021 the applicant through its counsel sent out a notice invoking Arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, communicating its decision to resolve the dispute amongst the parties by seeking recourse to Arbitration and sought for appointment of an Arbitrator. There has been no response from the respondent to the letter dated 18.09.2021, therefore the applicant was constrained to file the present application seeking appointment of sole arbitrator in terms of Clause 41 and 43 of the agreement. Hence, the present application.

5. The counter affidavit has been filed by the respondent and the specific plea taken by the respondent is that as per clause 41 of Pre-Tender Tie-up Agreement dated 28.11.2008, the parties shall make efforts to settle disputes amicably. Only if amicable settlement is not possible, the same shall be referred to Arbitration. In the present case it is primarily contended by the respondent that appointment of Arbitrator does not arise as amicable settlement was never invoked as per clause 41 of the Pre-Tender Tie-up Agreement dated 28.11.2008.

6. Reply affidavit has been filed by the applicant contending that it is incorrect to state that the applicant had not exhausted the remedy provided in clause 41 of the Pre-Tender Tie-up Agreement and that appellant had requested the respondent on multiple occasions vide e-mails correspondences dated 20.12.2021, 23.12.2021, 05.01.2022, 11.01.2022 and 21.01.2022 for an amicable settlement. Further the representative of the applicant had visited the office of the respondent at Bangalore for re-conciliation of accounts, as part of the amicable settlement, but no

information was provided to him. The same has also been communicated by the Applicant to the Respondent vide e-mail dated 11.01.2022. In view of the fact that the respondent did not respond to the applicant's various requests for reconciliation and settlement of issues amicably, the applicant has no other option than to file the present Arbitration Application seeking appointment of sole Arbitrator to adjudicate and resolve the disputes between the applicant and the respondents that pertain to the violation of the Pre-Tender Tie-up Agreement dated 28.11.2008.

**DISCUSSION AND CONCLUSION :**

7. On perusal of the record, it is evident that the request of the applicant in the present Arbitration Application to appoint a Sole Arbitrator to adjudicate and resolve the disputes between the Applicant and the Respondent that pertain to the violation of the Pre-Tender Tie-up Agreement dated 28.11.2008 is opposed by the Respondent even as per the counter affidavit filed by the Respondent in the present Arbitration Application on the sole ground that the Applicant has not extinguished the remedy

provided in Clause No.41 of the Pre-Tender Tie-up Agreement read with Annexure III (Conciliation and Arbitration Clause) and that the Applicant failed to exercise its right to conciliation to settle the disputes amicably though the Respondent arranged meeting vide Respondent's letter dated 08.10.2021, hence the Applicant is not entitled to invoke the clause of Arbitration to resolve the alleged disputes between the Applicant and the Respondent straight away without exhausting conciliation proceedings as provided under Clause No.41 of the Pre-Tender Tie-up Agreement read with Annexure III (Conciliation and Arbitration Clause).

**8.** This Court opines that it is evident even as per the pleas put-forth by the Respondent in the counter affidavit filed by the Respondent in the present Arbitration Application that the Respondent herein does not dispute the existence of Arbitration Agreement, nor the Respondent disputes the existence of disputes between the Applicant nor the Respondent disputes the requirement for adjudication of disputes. The only main grievance of the Respondent is that the Applicant failed to exhaust conciliation proceedings as provided under Clause No.41 of the Pre-Tender Tie-

Up Agreement read with Annexure-III (Conciliation and Arbitration Clause).

9. It is contended by the learned counsel appearing on behalf of the Respondent, referring to the contents of the legal notice dated 05.10.2021 issued by the Respondent to the Applicant in reply to Applicant's registered notice dated 18.09.2021 seeking invocation of Arbitration for settlement of disputes between the Applicant and the Respondent that in addition to the specific plea of the Respondent that the Applicant failed to make efforts to settle disputes amicably through conciliation, the Applicant failed to specify the dispute/differences to be referred to the Arbitrator together with the amounts claimed in respect of each claim, and therefore the question of appointment of Arbitrator would not arise.

10. **Having regard to the pleadings and contentions the following questions arise for consideration :**

i. **Whether on the two grounds put-forth by the Respondent the Applicant is not entitled for the relief prayed for in the present Arbitration Application ?**

- ii. Whether a case is made for appointment of Arbitrator to decide the disputes between the parties ?

**11. In so far as the first issue is concerned.**

- i. **Whether on the two grounds put-forth by the Respondent the Applicant is not entitled for the relief prayed for in the present Arbitration Application ?**

**Clause 41 and 43 of the Pre-Tender Tie-up Agreement dated 28.11.2008 entered into between the Applicant and the Respondent is extracted hereunder :**

**Clause 41** : The 'Parties' shall make efforts to settle disputes, if any, amicably. Only if amicable settlement is not possible, the same shall be referred to the sole arbitration of the Chairman & Managing Director (CMD) of EPI or the person appointed by the CMD, EPI and the decision of the arbitrator shall be final and binding on the "Parties". Arbitration will be according to "Conciliation & Arbitration" clause, which is enclosed at Annexure-III.

**Clause 43** : This agreement shall be governed by the Indian Laws for the time being in force and only the Courts in Hyderabad alone shall have the exclusive jurisdiction to entertain and decide any matter arising out of the agreement/contract.

- 12.** It is specifically averred by the Applicant in the rejoinder filed on behalf of the Applicant in the present Arbitration Application that the Applicant had requested the Respondent on multiple occasions

vide email correspondences dated 20.12.2021, 23.12.2021, 05.01.2022, 11.01.2022 and 21.01.2022 for an amicable settlement and further the representative of the applicant had visited the office of the Respondent at Bangalore for reconciliation of accounts as part of amicable settlement, but no information was provided to him and the same had also been communicated by the Applicant to the Respondent vide email dated 11.01.2022, as there was no response from the Respondent herein inspite of the multiple requests for amicable settlement, the Applicant herein was constrained to file the present Application before this Court. It is further specifically averred by the Applicant at para 4 of the rejoinder filed on behalf of the Applicant in the present Arbitration Application, that the Respondent having deliberately delayed proceedings, cannot plead the violation of Clause 41 of the Pre-Tender Tie-up Agreement.

**13. This Court in the present Arbitration Application taking into consideration the specific plea of the Respondent as put-forth in the counter affidavit in the present application and duly considering the request of the learned counsel**

**appearing on behalf of the Respondent passed orders on 17.11.2023 observing as follows :**

"Heard both the learned Counsel on record.

The learned counsel for the respondent submits that the conciliation proceedings should be initiated first prior to seeking appointment of an arbitrator.

The learned counsel for the applicant obtained instructions on the said contention put forth by the learned counsel appearing on behalf of the respondent through e-mail and same reads as under:

"In this regard, it is to inform you that we are agreeable for time bound conciliation (preferably within 15 days) in Hyderabad during pendency of the case."

Learned counsel for the respondent submits that period of 15 days will not suffice and a period of 40 days may be granted for initiation and conclusion of the conciliation of proceedings.

**Taking into consideration, the aforesaid submissions of both the learned counsel on record it is directed that conciliation proceedings should be initiated and concluded between the parties in the present Arbitration Application No.139 of**

**2022, within a period of 40 days from the date of receipt of the copy of the order.”**

14. On 15.03.2024 it is represented by the learned counsel appearing on behalf of the Applicant that in pursuance to the orders of this Court dated 17.11.2023 on 15.03.2024, conciliation proceedings took place between the Applicant and the Respondent herein, but however, the conciliation proceedings had failed and thereafter this Court proceeded and heard the present Arbitration Application on 02.04.2024 and 10.04.2024 and reserved the same for pronouncement of orders.

15. This Court opines that in the present case the conciliation proceedings initiated by the Applicant at the first instance had in fact commenced upon the request of the learned counsel appearing on behalf of the Respondent in pursuance to the orders of this Court dated 17.11.2023 (referred to and extracted above) but however, the said proceedings had failed.

**16. Section 21 of the Arbitration and Conciliation Act, 1996 reads as under :**

**Commencement of arbitral proceedings : Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.**

**17. In view of the fact as borne on record that the Applicant herein had invoked the Arbitration through the Legal notice dated 18.09.2021 issued on behalf of the Applicant and the Respondent herein received it, therefore as per Section 21 of the Arbitration and Conciliation Act, 1996 (referred to and extracted above), this Court opines that the arbitral proceedings had already been commenced.**

**18. In so far as the plea of the Respondent the conciliation proceedings are mandatory which however in the present case had been initiated and failed, the Delhi High Court observed in the judgment reported in (2014) SCC Online Delhi 6602 in Ravindra Kumar Varma Vs. BPTP Limited as under :**

“Any doubt on the aspect of whether conciliation proceedings as required by the arbitration clause, is directory or mandatory in nature, is removed when reference is placed on Sec.77 of the Act which reads as under”

**“77. Resort to arbitral or judicial proceedings:**

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings **except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.”**

**19. This Court opines that the conciliation process cannot in any manner, effect the right of the Applicant to invoke the arbitration. It is borne on record that steps have been initiated by both the Applicant and the Respondent in pursuance to the orders of this Court dated 17.11.2023 to arrive at amicable settlement of the disputes with the Respondent, but however, the said attempts had failed.**

**20. The Apex Court in the judgments listed below held that the process of conciliation cannot in any manner effect the right of the Applicant to invoke the arbitration :**

- a) Visa International Limited V. Continental Resources (USA) Limited, (2009) 2 SCC 55;
- b) Ravindra Kumar Varma v. M/s. BPTP Ltd., & Anr., 2014 SCC Online Del 6602;
- c) Saraswathi Construction Company v. East Delhi Co-operative Group Housing Society Ltd., 1994 SCC Online Del 563;
- d) Sarveh Security Services Pvt. Ltd., v. Managing Director, DSIIIDC, 2018 SCC Online Del 7996;
- e) Siemens Limited v. Jindal India Thermal Power Limited, 2018 SCC Online Del 7158;
- f) Union of India v. M/s. Baga Brothers & Anr. 2017 SCC Online Del 8989;
- g) M/s. Sikand Construction Co. v. State Bank of India, 1978 SCC Online Del 180;
- h) M/s. IMZ Corporate Pvt. Lt., v. MSD Telamatics Pvt. Ltd., ARB. P-204/2021;
- i) Demerara Distilleries Private Limited v. Demerara Distillers Limited, (2015) 13 SCC 610;
- j) Quick Heal Technologies Limited v. NCS Computech Private Limited, (2020) SCC Online Bom 693; and
- k) Republic of Sierra Leone v. SL Mining Ltd., (2021) EWHC 268 (Comm).

**21. In so far as the plea raised by the learned counsel appearing on behalf of the Respondent that the Applicant did**

not specify the dispute together with the amounts claimed in respect of each claim between the parties in the Legal Notice dated 18.09.2021 issued on behalf of the Applicant invoking the Arbitration to the Respondent herein, this Court opines that it is not necessary to quantify the amounts claimed. The Apex Court in the judgment reported in (2011) SCC Online SC 860 in State of Goa vs. Praveen Enterprises held that it was not necessary for the claims to be specifically stated in the notice issued invoking the Arbitration Clause. The observations at para 18 and 19 of the said judgment are extracted hereunder :

**“In State of Goa v. Praveen Enterprises, Supreme Court observed as under :**

“18... In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which “a request for that dispute to be referred to arbitration is received by the respondent” the said confusion is cleared. Therefore, the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not.

19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding

Claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said Claims A and B. Subsequently if the claimant amends the claim statement by adding Claim C (which is permitted under section 23(3) of the Act) the additional Claim C would not be preceded by a notice seeking arbitration. The date of amendment by which Claim C was introduced, will become the relevant date for determining the limitation in regard to the said Claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may."

**In the light of the discussion and conclusion as arrived at as above this Court opines that the two grounds put-forth by the Respondent do not disentitle the Applicant for the relief prayed for in the present Arbitration Application.**

**22. In so far as the second issue is concerned.**

**ii. Whether a case is made for appointment of Arbitrator to decide the disputes between the parties ?**

**This Court opines that it is amply clear from the facts as pleaded and on perusal of the material on record that there has been no mutual satisfaction arrived at between the parties as regards the disputes in hand in view of the fact that the conciliation proceedings though initiated in pursuance to the orders of this Court dated 17.11.2023 could**

**not be concluded favourably and hence the precondition for amicable settlement of the dispute between the parties had not been materialised at all. Admittedly as borne on record since there is live issue between both the parties this Court is of firm opinion that arbitral procedure has to be started for resolving the live issue in between the parties.**

**23. Taking into consideration:**

**(a) The aforesaid facts and circumstances of the case and,**  
**(b) Duly taking into consideration the observations of the courts in the judgments (referred to and extracted above)**  
**i.e.,**

- (i) (2014) SCC Online Delhi 6602 in Ravindra Kumar Varma Vs. BPTP Limited,
- (ii) (2011) SCC Online SC 860 in State of Goa Vs. Praveen Enterprises,
- (iii) Visa International Limited V. Continental Resources (USA) Limited, (2009) 2 SCC 55;
- (iv) Ravindra Kumar Varma v. M/s. BPTP Ltd., & Anr., 2014 SCC Online Del 6602;
- (v) Saraswathi Construction Company v. East Delhi Co-operative Group Housing Society Ltd., 1994 SCC Online Del 563;

- (vi) Sarveh Security Services Pvt. Ltd., v. Managing Director, DSIIDC, 2018 SCC Online Del 7996;
- (vii) Siemens Limited v. Jindal India Thermal Power Limited, 2018 SCC Online Del 7158;
- (viii) Union of India v. M/s. Baga Brothers & Anr. 2017 SCC Online Del 8989;
- (ix) M/s. Sikand Construction Co. v. State Bank of India, 1978 SCC Online Del 180;
- (x) M/s. IMZ Corporate Pvt. Lt., v. MSD Telamatics Pvt. Ltd., ARB. P-204/2021;
- (xi) Demerara Distilleries Private Limited v. Demerara Distillers Limited, (2015) 13 SCC 610;
- (xii) Quick Heal Technologies Limited v. NCS Computech Private Limited, (2020) SCC Online Bom 693; and
- (xiii) Republic of Sierra Leone v. SL Mining Ltd., (2021) EWHC 268 (Comm) **and**;

**(c) Duly considering the averments made in the rejoinder filed on behalf of the applicant,**

**(d) In the light of discussion and conclusion as arrived at as above,**

**Sri Justice A.Rajasekhar Reddy, Hon'ble Judge (Retired),  
High Court of Judicature for the State of Telangana, Plot  
No.22A, Road No.12, MLA Colony, Banjara Hills, Hyderabad –**

500 033, Mobile No.8331010691, is appointed as Sole Arbitrator to arbitrate on the dispute raised by the Applicant, both the parties are directed to appear before the Learned Arbitrator on 20.07.2024 at 11.00 a.m., whereafter the Learned Arbitrator shall proceed with the matter in accordance with law.

24. Let a copy of this Order be forwarded by the Registry to both the parties and also to the Learned Arbitrator for doing the needful.

25. Accordingly, the present Arbitration Application is disposed of. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

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**MRS.SUREPALLI NANDA, J**

Date: 03.06.2024

**Note :** L.R. Copy to be marked.  
B/o. *Yvkr*

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**Arb.A.No.139 OF 2022**  
(L.R.copy to be marked)

**Date: 03.06.2024.**

*Yvkr*