

**HIGH COURT FOR THE STATE OF TELANGANA**

**ARBITRATION APPLICATION No.186 OF 2022**

Sri Sai Krishna Constructions,  
Rep. by its Managing Partner  
Smt.G.Prathima, W/o.G.Murali Krishna Reddy,  
Aged: 54 years,  
Office at 2<sup>nd</sup> Floor, Plot No.230, Shiva Nagar,  
Hyderguda, Rajendranagar Mandal,  
Hyderabad – 500048.

....Petitioner

VERSUS

Harvins Constructions (P) Limited,  
Rep. by A.Vamsi Krishna Reddy,  
H.No.8-2322/H, Road No.3,  
Banjara Hills,  
Hyderabad – 500034

... Respondents

DATE OF JUDGMENT PRONOUNCED: 04 .07.2023

**THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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**J. SREENIVAS RAO, J**

**THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

**+ ARBITRATION APPLICATION No.186 OF 2022**

% Dated 04.07.2023

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... Respondents

! Counsel for the Petitioner	:	Mr.D.Vijay Chandra Reddy
^ Counsel for the Respondent	:	Mr.S.Ravi (senior counsel)

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2013) 1 SCC 641
2. (2017) 9 SCC 729
3. A.P.No.13 of 2021

**HON'BLE SRI JUSTICE J SREENIVAS RAO**  
**ARBITRATION APPLICATION No.186 OF 2022**

**ORDER:**

The applicant filed this application under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 read with Scheme for Appointment of Arbitrator, 1996 (for short, 'the Act') to appoint a sole arbitrator to adjudicate the claims and disputes between the applicant and the respondent.

***Factual matrix***

2. The applicant is a partnership firm registered with Registrar of Firms, Hyderabad, under Indian Partnership Act, 1992. The applicant firm is in the business of civil engineering and undertakes and executes all kinds of contracts for civil engineering works with specialization in irrigation projects. The applicant submits that the respondent is a private limited company doing the business of procuring civil engineering works by obtaining tenders from the public works departments and get the work executed by engaging specialists in the field on sub-contract basis or on the

basis of independent contractor. The applicant further submits that her husband and managing director of the respondent company are close relatives, with that rapport respondent engaged the applicant to execute various irrigation contract works numbering 10 procured through tenders since 2011. The respondent entrusted the said contract works to the applicant on a back-to-back basis. The respondent has engaged the applicant as a sub-contractor by duly executing sub-contract agreements for nine works out of ten works. For one work viz., Telugu Ganga Project granted by erstwhile Andhra Pradesh Government, the sub-contract between respondent and the applicant is established by correspondence and business communication between applicant firm and respondent company and with the concerned irrigation department.

2.1. The details of the works entrusted by the respondent to the applicant as below:

- a) Gajuladinee Project under Sub-contract agreement dated 03.10.2011. Nature of the work is modernization of

SanjiviahSagar (GajulaDinne) Medium Irrigation Project in Kurnool district under JICAprogramme. The cost of project or value of the contract is Rs.43,19,23,482/-.

- b) Kanchi Project – Ranchi under Sub-contract agreement dated 18.07.2013. The nature of the work is restoration work including lining of main canal & Restoration work of Baranda&Adradih Branch Canal under Kanchi Weir Scheme. The cost of the project or value of the contract is Rs.37,12,66,519/.
- c) Kokro project – Ranchi under Sub-contract agreement dated 18.07.2013. The nature of the work is restoration work including lining and repair of structures of Kudadih Branch Canal and Sonahatu Distributaries under KOKRO irrigation scheme. The cost of the project or value of the contract is Rs.8,38,96,566/-.
- d) Jamshedpur-Reach-1 under Sub-contract agreement dated 19.03.2014. The nature of the work is Construction of earth work. P.C.C. Lining, WBM Road and all structures from Km.29.35 to Km.36.00 of Gulidih Left Main Canal. The cost of the project or value of the contract is Rs.36,95,05,498/-.
- e) Jamshedpur-Reach-2 under Sub-contract agreement dated 19.03.2014. The nature of the work is Construction of earth work. P.C.C. Lining, WBM Road and all structures

from Km.36.00 to Km.42.60 of Gulidih Left Main Canal. The cost of the project or value of the contract is Rs.37,00,99,149/-.

- f) Jamshedpur-Reach-3 under Sub-contract agreement dated 19.03.2014. The nature of the work is Construction of earth work. P.C.C. Lining, WBM Road and all structures from 42.60 to 49.30 km of Gulidih Left Main Canal. The cost of the project or value of the contract is Rs.36,54,75,955/-.
- g) Jamshedpur-Reach-4 under Sub-contract agreement dated 19.03.2014. The nature of the work is Construction of earth work. P.C.C. Lining, WBM Road and all structures from 49.30 Km to 56.00 Km of Gulidih Left Main Canal. The cost of the project or value of the contract is Rs.44,14,54,166/-.
- h) LMC& RMC – Karim Nagar – package-1 under Sub-contract agreement dated 03.10.2011. The nature of the work is investigation, Design and execution of Canal network system including Earth work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub-minors and formation of field channel including structures to serve to an extent of 49,500 acres in Karimnagar Dis. Under Gangadhar Tank and its concerned gravity canals (canals network package-1). The cost of the project or value of

the contract is Rs.78,49,00,000/-.

- i) Construction of Gravity Canal under Sub-contract agreement dated 03.10.2011 i.e., included in the LMC& RMC – Karim Nagar – package-1. The nature of the work is construction of gravity canal from Gangadhara to Vemulawada and Stambampally including up-gradation of Gangadhar and Stambampally tanks. The cost of the project or value of the contract is Rs.24,11,13,440/-.
- j) TGP – Nellore, SatyaSai Ganga Canal Package – 10. The value of the contract attached to Sri Sai Krishna Constructions is Rs.64,00,000/-. The sub-contract agreement for the work is established by correspondence and business communication between the respondent, our firm you, and concerned irrigation department.

2.2. The applicant further submitted that pursuant to the works entrusted by the respondent through sub-contract agreements, the applicant commenced the work and also completed major part of the works and some of the works delayed due to non-cooperation of the respondent and disputes arose between the applicant and the respondent. The applicant made several demands to the respondent for payment of the amounts due, but the respondent has not chosen to comply with the demand made by the applicant.

The respondent is liable to pay a total sum of Rs.27,43,08,428/- towards work done by the applicant inclusive interest, price escalation, over head charges, idling of men and machinery and damages. It is further submits that after making several demands made by the applicant, the respondent remitted an amount of Rs.3,86,30,308/- and the respondent is liable to pay the remaining amount of Rs.23,56,78,115/-.

2.3. The applicant further submits that on 05.05.2022 he got issued legal notice through their counsel calling upon the respondent to pay the due amount of Rs.23,56,78,115/- within 15 days from the date of receipt of the said notice. The respondent, without paying the said amount, issued a reply notice on 28.05.2022 denying the claim made by the applicant with untenable grounds. On the other hand, the respondent made a counter-claim for Rs.9,29,06,714/- from the applicant along with interest at 18% per annum.

2.4. He further submitted that the applicant issued a notice on 14.06.2022 under Section 21 of the Act to the respondent calling



upon it to give consent for appointment of named sole arbitrator for resolution of the dispute. The respondent issued a reply notice on 12.07.2022 with false allegations and not given consent for appointment of sole arbitrator, on the other hand, demanded the applicant to pay an amount of Rs.9,29,06,714/- with interest. In view of non-giving consent by the respondent for appointment of sole arbitrator for resolving the dispute between the applicant and the respondent, the applicant filed the present application.

3. The respondent filed counter denying the allegations made in the application *inter alia* contended that the arbitration application filed by the applicant seeking for appointment of sole arbitrator in respect of 9 sub-contract agreements and another work, total comes to 10 different sub-contract agreements, single application is not maintainable. He further contended that there is no composite arbitration clause, much less composite agreement. Hence, the application filed by the applicant is liable to be dismissed. The respondent further submits that insofar as TGPSatyaSai Ganga Canal Package -10 concerned there is no

written agreement between the applicant and the respondent company and the applicant is not entitled to seek appointment of arbitrator. There is no arbitration clause, more so there is no agreement. The respondent further contended that the projects are located in different districts and different states which are mentioned below:

- a) Gajuladinne Project is at Kurnool district (Andhra Pradesh) said to have been entrusted in 2011.
- b) Kanchi Project is at Ranchi District (Jharkhand) entrusted in 2013.
- c) Kokro Project is at Ranchi District (Jharkhand) entrusted in 2013 and
- d) Four different projects are at Jamshedpur District (Jharkhand) said to have been entrusted in 2014.
- e) It is submitted that there is no inter-connection or interdependence as amongst all the contracts referred as paragraph 7 of the present arbitration application and each of the project/s being distinct and independent, cannot have a common and composite invocation, much less a composite reference to Arbitration.

3.1. He further contended that for (i) different projects/contracts (ii) few of which are written (iii) few are unwritten (iv) which are located and are to be executed at different locations/states cannot be compositely invoked under a single application by issuing a single notice for all (9) sub-contract agreements and one unwritten agreement (Project of TGP Nellore).

3.2. The respondent further submits that the document filed at page No.24 of the application i.e., sub-contract agreement dated 03.10.2011, is a fabricated document. The application clearly shows that though they pertain to two different agreements, only one stamp paper is used. The serial number of the stamp paper at Page No.24 and Page No.50 is one and the same i.e., S.No.7032 dated 10.11.1994. For this, it clearly shows that the applicant fabricated the document, which is created and forged one. The applicant indulged in impersonation and forgery of the said document.

4. Sri D.Vijay Chandra Reddy, learned counsel appearing for the applicant, submits that after following the due procedure as

prescribed under provisions of the Act and amended Act, 2006, the applicant filed this application for seeking appointment of sole arbitrator for resolution of the disputes between the applicant and the respondent. He further contended that applicant and the respondent have entered (9) sub-contract agreements in respect of 10 sub-contract works and in all the agreements the parties are one and the same and in (9) sub-contract agreements there is a specific clause mentioned at Sl.No.12 of the agreement which reads thus:

*“In case of any dispute or difference of opinions between the parties hereto, the same shall be referred to an Arbitrator whose Award shall be binding on the parties hereto.”*

4.1. Learned counsel further submits that pursuant to the above arbitration clause, the applicant got issued a notice through their counsel on 14.06.2022 invoking the provisions of Section 21 of the Act, to the respondent, to give their consent for appointment of Sri B.Seshasayana Reddy, former High Court Judge of combined State of Andhra Pradesh, Hyderabad, as a sole arbitrator for discussion of the disputes between the applicant and the respondent within 30 days from the date of receipt of the said

notice. The respondent issued reply notice on 12.07.2022 simply denying the claims made by the applicant and not given consent for appointment of sole arbitrator.

4.2. He further contend that the arbitration application filed by the applicant in respect of 9 sub-contract works, a single arbitration application is maintainable. In support of his contention, learned counsel relied upon the judgment of the Hon'ble Apex Court in **Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and others**<sup>1</sup>.

5. Per contra, Sri S.Ravi, learned senior counsel appearing for the respondent, vehemently contended that single arbitration application filed by the applicant for appointment of arbitrator for the resolution of the disputes in respect of 9 sub-contract agreements is not maintainable under law. The respondent entrusted different contract works, which are located in different districts and different states and the cause of action is also different. He submits that there is no composite arbitration clause,

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<sup>1</sup> (2013)1 SCC 641

much less composite arbitration agreement in respect of 9 sub-contract agreements. Hence, issuance of single notice seeking for appointment of sole arbitrator by the applicant as well as single application filed under Section 11 of the Act is not maintainable under law. He further contended that the applicant itself stated in the application that there is arbitration clause, more so there is no written agreement in respect of project of TGP- Nellore, Satya Sai Ganga Canal Package - 10. In the absence of agreement for referring the dispute to arbitration, the applicant is not entitled to seek appointment of arbitrator in respect of the said work. It is further contended that the document filed along with the application at Page No.24 is a fabricated document. Basing upon the said document, the petitioner is not entitled to seek the relief of appointment of sole arbitrator.

6. Learned senior counsel further contended that the applicant has to file individual applications in respect of all 9 sub-contract works and single application is not maintainable for all the contract works. Learned senior counsel relied upon the judgment

of the Hon'ble Apex Court in **DuroFelguera, S.A. vs. Gangavaram Port Limited<sup>2</sup>**.

7. During the course of hearing, learned senior counsel fairly submits that the respondent is not having any objection to appoint single arbitrator, if the applicant files independent applications for each contract work by following due process of the Act.

8. After considering the rival submissions made by the respective parties and upon perusal of the material available on record, the following points arise for consideration:

1. Whether the single Arbitration Application filed by the applicant seeking for the appointment of sole arbitrator for dissolution of the disputes arising out of 9 sub-contract agreements, is maintainable under law?
2. Whether in the absence of written agreement and basing upon correspondence between the parties the applicant is entitled to seek appointment of arbitrator in respect of project of TGP- Nellore, SatyaSai Ganga Canal Package – 10 is permissible under law?

**POINT Nos.1 to 2:**

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<sup>2</sup> (2017) 9 SCC 729

9. As per the pleadings of the respective parties and documents filed in support of the application, it reveals that the respondent has entrusted 9 sub-contract works to the applicant which are mentioned at para 7 (a) to (j) of the application. The specific contention of the applicant is that the applicant and the respondent have entered sub-contract agreements in respect of the above said works on 03.10.2011, 08.07.2013 and 19.03.2014 respectively and during the course of contract works, the disputes arose between the applicant and the respondent. After several requests, the applicant issued a notice dated 05.05.2022 demanding the respondent to pay an amount of Rs.23,56,78,115/- towards work done by it inclusive of interest, price escalation, overhead charges, idling of men and machinery, and damages in respect of all the works mentioned in the said notice and this application is maintainable under law. It appears from the record that instead of paying the amount, the respondent issued reply on 28.05.2022 denying the claim made by the applicant and on the other hand, the respondent made a counter-claim for payment of the works



entrusted to it aggregating to Rs.9,29,06,714/- along with interest from the applicant. Thereafter, the applicant issued notice on 14.06.2022 invoking the provisions of Section 21 of the Act to the respondent to give consent for appointment of Sri B.Seshasayana Reddy, former High Court Judge of combined State of Andhra Pradesh, Hyderabad, as a sole arbitrator, for resolution of the disputes between the applicant and the respondent in respect of sub-contract agreements entered by them within the period of 30 days. The respondent issued a reply notice on 12.07.2022, without giving consent and denying the said claim made by the applicant for appointment of sole arbitrator and on the other hand, demanded an amount of Rs.9,29,06,714/- from the applicant. At that stage, the applicant filed the present application seeking appointment of sole arbitrator invoking the provisions of Section 11(5) and (6) of the Act.

10. A perusal of the record would reveal that the parties in all the agreements are one and the same, but terms and conditions mentioned in the agreements viz., the notice inviting tender,

general rules and contracts for the guidance of contractor, condition of contract, additional condition and specification for works had formed an integral part of the formal contracts are different and each agreement giving a separate name with different locations. The specific claim raised by the applicant in the application is that the respondent is liable to pay an amount of Rs.23,56,78,115/- to the work done by it pursuant to the sub-contract agreements which were executed by the respondent.

11. As stated in Chloro Controls India Private Limited (supra), the Hon'ble Supreme Court had considered the principle whether any non-signatory party could be subjected to arbitration. It has held that a non-signatory party could be subjected to arbitration provided the transactions were with a clear intention of the parties to bind both the signatory as well as the non- signatory. It has held as follows :-

"73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the mother agreement may not be feasible

without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed."

12. The specific contention of the learned senior counsel for the respondent that the application filed by the applicant seeking to refer the dispute in respect of 9 sub-contract agreements and one un-written sub-contract agreement, by way of one arbitration application is not maintainable under law. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in *DuroFelguera* (2 *supra*). In the said judgment, the Apex Court has dealt with composite reference and it has held that, if they are separate/multiple contracts exist independently with their own separate arbitration clauses, it is not possible to establish a single arbitral tribunal and, however, the concept of dealing with this situation has been addressed in the arena of international commercial arbitration. It has been observed that when the arbitration agreement is sufficiently broad to encompass ancillary agreements related to the main agreement, the entirety

of disputes arising from both the main agreement and the ancillary agreements can be resolved through a comprehensive reference process.

13. In the current situation at hand, the primary dispute between the parties revolves around the question is whether a single application for the appointment of an arbitrator is permissible when there is no overarching agreement and the contracts in question are separate and distinct. In the present case applicant has been entrusted with nine subcontract works by the respondent, as outlined in paragraphs 7 (a) to (j) of the application. The concept of a composite reference process is not applicable in this scenario as the documentary evidence available on record indicates that the execution of these ten individual sub-contracts has taken place across various independent irrigation projects. Throughout the contract execution period, the parties have consistently treated these contracts as separate and distinct entities. It cannot be inferred that the parties entered into one principle agreement for a single commercial project.

14. In the case of *DuroFelguera SA* (supra), the Hon'ble Supreme Court while deciding whether five different contracts, arising out of single package, i.e. Tender which was further divided into five different packages

(contract works) should be subjected to '*composite reference*', held that the doctrine of '*composite reference*' would not come into application when the contracts in dispute are independent in their existence. Furthermore, the court noted that to bring a set of agreements under the wing of composite reference, it is necessary to prove that agreements have been entered under or/and in connection with the Principle (mother) Agreement. The relevant paras are reproduced below:

40. The learned Senior Counsel for GPL relied upon Chloro Controls India Private Ltd. (supra), to contend that where various agreements constitute a composite transaction, court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. Even though Chloro Controls has considered the doctrine of "composite reference", "composite performance" etc., ratio of Chloro Controls may not be applicable to the case in hand. In Chloro Controls, the arbitration clause in the principal agreement i.e. clause (30) required that any dispute or difference arising under or in connection with the principal (mother) agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with Rules of ICC. *The words thereon "under and in connection with" in the principal agreement was very wide to make it more comprehensive. In that background, the performance of all other agreements by respective parties including third parties/non-signatories had to fall in line with the principal agreement. In such factual background, it was held that all agreements pertaining to the entire disputes are to be settled by a "composite reference". The case in hand stands entirely on different footing. As discussed earlier, all five different Packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the*

*terms and conditions of the Original Package No.4 TD nor on the MoU, which is intended to have clarity in execution of the work.*

15. It is very much relevant to mention here that in ***M/S. Ganapati Technologyvs The State Fisheries Development***<sup>3</sup> High Court of Calcutta, relied upon, ***DuroFelguera SA*** (*supra*) held that a composite reference is not possible when there are two separate contracts and no evidence to suggest they are part of a single commercial project. As a result, the court has ruled in favour of the respondent, stating that the petition is not maintainable. The relevant paras are extracted here under:

8. Learned Advocate appearing for the petitioner has submitted that, the respondent had delayed in handing over the worksite for the project. The respondent has also breached other terms and conditions of the contract between the party which has led to the delay in the completion of the work. He has submitted that, the respondent had issued a show-cause notice dated April 22, 2020 in respect of the project for construction of Fish Marketing Complex at Nalban Fisheries Project alleging non-execution of the work. The respondent had issued a notice dated August 19, 2020 imposing compensation under Clause 2 of the conditions of the contract both in respect of the construction of Fish Marketing Complex at Nalban Fisheries Project and the Post harvest Operation and Cold Chain at Nalban Fisheries Project. The petitioner had responded to such notice by the advocate's letter dated September 1, 2020. The respondent had issued a notice dated December 2, 2020 terminating both the contracts. The respondent had purported to forfeit security deposit including the earnest money of the petitioner. The petitioner had invoked

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<sup>3</sup>A.P. No. 13 of 2021

the arbitration clause and issued a notice with regard thereto by a letter dated December 2, 2020.

9. Learned Advocate appearing for the petitioner has submitted that, disputes and differences have arisen between the parties in respect of the two projects. Such disputes and differences are common in nature. According to him, they should be combined together and referred to single composite arbitral reference. He has submitted that, the arbitration clause in both the contracts are identical and hence the disputes and differences and/or claims between the parties herein could be resolved by a composite single reference. He has referred to the arbitration clause and the notice dated December 2, 2020 invoking Section 21 of the Arbitration and Conciliation, 1996.

10. Learned Advocate appearing for the petitioner has submitted that, the respondents have combined to the two contracts and have termed both as one integral contract as will appear for the contents of the notices issued by the respondent. In support of his contention that a composite reference is permissible, learned Advocate appearing for the petitioner has relied upon 2018 Volume 15 Supreme Court Cases page 678 (Ameet Lalchand Shah & Ors. v. Rishabh Enterprises & Anr.), 2013 Volume 1 Supreme Court Cases page 641 (Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. & Ors.), 2020 SCC Online Bombay 391 (Narendra Hirawat & Co. v. Sholay Media Entertainment Pvt. Ltd. & Anr.) and 2010 SCC Online Bombay 1900 (Board of Control for Cricket in India v. KPH Dream Cricket Private Limited).

11. As in this case the learned Advocate appearing for the respondent has submitted that, the parties had entered into two separate contracts. ***He has referred to the two notices inviting tenders and submitted that, the two notices inviting tenders are separate and distinct and that they are not related to the other. He has submitted that, the parties entered into two separate and individual contracts. These two contracts should not be clubbed together. According to him, two contracts are separate and distinct. He has relied upon (Ajoy Kumar Saha v. Ashok Leyland Finance Ltd.) and 2017 Volume 9 Supreme Court Cases 729***

*(DuroFelguera, S.A. v. Gangavaram Port Limited) in support of his contentions that, there being two separate and distinct contracts, separate references are required to be made.*

15. The issue of maintainability of the proceedings as has been raised by the respondent requires consideration. According to the respondent, the parties had entered into two separate and distinct contracts containing individual arbitration agreements and therefore, the two contracts cannot be clubbed together in one reference.

*17. DuroFelguera, S.A. (supra) has dealt with the concept of composite reference. It has held that, when there are separate contracts each having independent existence with separate arbitration clauses then there cannot be a single arbitral tribunal. It has however dealt with such concept in the context of international commercial arbitration. It has noticed that, in the event, the arbitration agreement is such that, it is wide enough to make it comprehensive and bring within its ambit, agreements ancillary to the mother agreement then, the entire disputes arising out of the mother and the ancillary agreements can be settled by a composite reference.*

21. Under Section 7 of the Act of 1996 an arbitration agreement has to be in writing between identifiable parties referring specified disputes in respect of a defined legal relationship whether contractual or not. *A composite reference is permissible under the Act of 1996. In order to make a composite reference, various factors have to amalgamate so as to make a composite reference possible. There has to be a mother agreement and ancillary agreements governing the parties. The concerned arbitration agreement or the mother agreement should be comprehensive enough to bring within its fold agreements ancillary to the mother agreement so that, the disputes arising out of or in connection with the mother agreement or the ancillary agreement can be settled by a composite reference. If the parties have entered into several agreements in respect of a single commercial project, then also, the disputes and differences arising out of the various agreements could be resolved by referring the parties to a composite arbitration. Essentially, there has to be a single commercial project under which,*



*there may or may not be several contracts or agreements involving various parties. The arbitration agreement of the single commercial project should be wide enough to encompass the parties to the subsequent agreements. Again if there are two or more contracts and they are so intertwined with each other so as to prejudice the parties should separate arbitrations are held, then a composite reference can be made.*

22. Although the Act of 1996 has stipulated that, there must be a written agreement between the parties to refer the disputes and differences to arbitration, Chloro Controls India Private Limited (supra) has recognised an exception thereto, that is to say, any non-party to an arbitration agreement can also be subjected to arbitration. However the same has to be in exceptional circumstances and upon a finding that, the transaction in question is of a composite nature where performance of the mother agreement may not be feasible without the aid, execution and performance of supplementary or ancillary agreements for achieving the common object and collectively having bearing on the dispute. The Court must also arrive at a finding that, a composite reference would serve the ends of justice. Only then, the Court can direct a non-party to the arbitration agreement to arbitration.

16. This court is in agreement with the above view taken by the High Court of Calcutta. The principle which can be carved out from the Apex Court's Judgement in ***Duro Felguera, S.A*** (supra), is that in order to invoke the doctrine of composite reference, it is necessary that the agreements in question have to be governed by a principle (mother) agreement. It is only when agreements are entered subsequent to the mother agreement, they become ancillary agreements which can then be referred to a composite

reference. In the present case, there is no principle (mother) agreement governing the sub-contracts, as these contracts do not arise from a single commercial project. The contracts have been entered between the parties basing separate terms and conditions, arising out of different nature and scope of the work. In essence, the parties have distinct contracts, each with a separate name and arbitration clause. During the execution of the sub-contract agreements, namely a) the Gajuladinne Project, 2) the Kanchi Project, 3) the Kokro Project, and d) four different projects in Jamshedpur district (as mentioned above), the parties involved have treated these contracts as separate and independent entities. The sub-contract agreements have not been entered under or in connection with a principle agreement. They are independent in nature and do not arise from a single commercial project, on the contrary each sub-contract agreement is executed for the purposes of a different projects located at different regions in the country. Therefore, it cannot be said that sub-contract agreements in dispute can be subjected to '*composite reference*' as they are in essence distinct and independent sub-contract agreements, not arising from a single commercial project, therefore, a single application for seeking appointment of sole

arbitrator is not maintainable. Consequently, the present application filed by the applicant is liable to be dismissed on the ground of maintainability alone.

17. In view of the above findings given in Issue no.1, no further adjudication is required at this stage with respect to the Issue no.2, as the present arbitration application stands dismissed on the grounds of maintainability. That being said, the applicant is not precluded from filing fresh applications seeking the appointment of arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

18. Accordingly, this application stands dismissed. No costs.

Miscellaneous applications, if any pending, shall stand closed.

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**J. SREENIVAS RAO, J**

Date : 04.07.2023

L.R. copy to be marked - Yes

mar/psw