

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION NO.109 OF 2015

ORDER:

Heard Sri Vedula Venkata Ramana, learned Senior Counsel for the applicant and Sri N.Jaya Surya, learned counsel for the respondents.

The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act" for brevity) seeking appointment of an Arbitrator. Clause 11 of the contract dated 17.04.2008 contains the heading "Arbitration" and reads as under.

"All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled amicably by friendly negotiations between the two parties. If no amicable settlement can be reached, the case shall be submitted in jurisdiction of Visakhapatnam, India."

While the contention urged on behalf of the applicant is that the heading "Arbitration" would suffice to treat the aforesaid clause as an arbitration agreement, the contention urged on behalf of the respondents is that the arbitration agreement should be specific; and Clause 11 merely requires the case to be submitted in the jurisdiction of Visakhapatnam, India, which would evidently mean the competent Civil Court in Visakhapatnam, and not by arbitration.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the applicant, would however contend, placing reliance on Section 7(4)(b) of the 1996 Act, that, even exchange of letters, telex, telegrams or other means of telecommunication, would suffice to treat such exchanges as a

reference to the arbitration agreement; and, in such circumstances, the reference to the word “Arbitration”, in Clause 11 of the contract, must be construed as the parties having agreed to refer the dispute to arbitration.

I must express my inability to agree. While Section 7(4)(b) of the 1996 Act, no doubt, enables an agreement to be treated as an arbitration agreement in writing if it is contained in an exchange of letters, it also requires such exchange of letters to provide a record of the arbitration agreement. It is only if, from such exchange of letters, it is clearly discernable that the parties to such correspondence had agreed to resolve their inter-se disputes through arbitration, appointing an Arbitrator to do so, would this Court be justified in exercising its jurisdiction, under Section 11(6) of the 1996 Act, to appoint an Arbitrator. As noted hereinabove, though Clause 11 of the Contract contains the heading “Arbitration”, there is no reference in the body of the clause to parties having agreed to resolve the dispute through arbitration. In the absence of a specific agreement between the parties, to have their mutual disputes resolved through arbitration, this Court would not be justified in exercising jurisdiction, under Section 11 of the 1996 Act, to appoint an arbitrator.

The application fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

29th December 2017
RRB