IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH

ARBITRATION APPLICATION NO: 76 OF 2025

Between:

M/S IL And Fs Engineering And Constructions Company Limited, A company incorporated and registered under the Laws of India, having its registered office at- 8-2-120/113/3/4F, Sanali Info Park, Cyber Towers, Road No-2, Banjara Hills, Hyderabad-500033, Rep by its Authorized Representative and Dy Manager Legal Mr. Chinthakunta Rangaiahbabu. **...Applicant**

AND

1. B.K. STEEL, Having office at- Plot No. D-54/1, Road No-23, Gate No-4, Hojiwala Industrial Estate, Sachin - Palasana Road, Surat, Gujarat - 394230. Represented by its Partner
2. Mr. Bhaumik Gandhi, Partner of B.K. Steel, Having office at- Plot No. D-54/1, Road No-23, Gate No-4, Hojiwala Industrial Estate, Sachin - Palasana Road, Surat, Gujarat - 394230.
3. Mr. Priyank Ketanbhai Gandhi, Partner of B.K. Steel, Having office at- Plot No. D-54/I, Road No-23, Gate No-4, Hojiwala Industrial Estate, Sachin - Palasana Road, Surat, Gujarat - 394230.

...Respondents

Application filed Under Section 11 (5) of the Arbitration & Conciliation Act, 1996 Read with Section (3) (i) (d) of Scheme for Appointment of Arbitrators, 1996 praying that this Hon'ble Court may be pleased to appoint a Sole Arbitrator to adjudicate the claims and disputes arising out of Purchase Order dated 23.02.2023 between the applicant and respondent.

Counsel for the Applicant : Mr. R.S. Phani representing Mr. N. Jeevan Kumar

Counsel for the Respondents: -

The Court made the following:

Mr. learned R.S.Phani, learned counsel representing Mr. N.Jeevan Kuamr, learned counsel for the applicant.

Heard learned counsel for the applicant.

Respondent Nos.2 and 3, who are the partners of respondent No.1 partnership firm have not appeared despite valid service of notice.

Learned counsel for the applicant submits that the legal notice dated 28.01.2025, Annexure P9, for invocation of arbitration Clause 21 under the Purchase Order dated 23.02.2023 for appointment of sole Arbitrator for adjudication of the dispute between the parties has remained unreplied. Applicant had made an advance payment of Rs.4,61,04,075/- on 27.02.2023 to the respondents through online mode against Purchase Order dated 23.02.2023 for supply of 635 MT TMT Bars for the "Surat Metro Project" undertaken by the applicant. Despite full advance payment, the respondents have failed to supply the entire agreed quantity of 653 MT TMT Bars, instead they have delivered only about half the quantity and have neither supplied the remaining materials nor refunded the amount equivalent to the shortfall. The respondents made several attempts to amicably resolve the dispute and a meeting was also held on 13.04.2023 wherein the respondents undertook to supply the material in a periodical manner. The applicant has also lodged a complaint before Althan Police, Surat on 11.04.2023, but no action has been taken. Later, the respondents further gave and undertaking on 14.06.2023 for resumption of the supply of materials from 10.07.2023. However, only 37 Metric Tonnes of supplies were made on 17.07.2023. The respondents were further requested through e-mail dated 27.11.2023 to resume supplies within 10 days, but no supplies were made. Thereafter, the applicant has invoked the arbitration clause 21 provided under the Purchase Order dated 23.02.2023, which reads as under:

"21. Arbitration:

In the event of any dispute/differences arising out of this purchase order or difference of opinion between the parties on any point in the purchase order arising out of or in connection with the purchase order or with regard to performance of any obligation hereunder by either party, the parties hereto shall use their best efforts to settle such

disputes or difference of opinion amicably by mutual negotiations. In case, no agreement is reached within 30 days from the date of such dispute/difference, either party may forthwith give to the other, a notice in writing of the existence of such question, dispute or difference of opinion and their intention of invoking the arbitration under the provisions of Arbitration & Conciliation Act, 1996 along with any amendments or re-enactments thereof. The rules there under or any statutory modification thereof for the time being in force shall prevail. The arbitrator shall be appointed by the CEO of IECCL and the other party shall have no objection regarding the nomination of such arbitrator being an employee of IECCL or IL&FS Group. The place of arbitration shall be at Hyderabad and the language used shall be English. The award pronounced by the Arbitral Tribunal shall be final and binding on the parties."

It is submitted that on failure of the respondents to respond to the notice for arbitration, the applicant has approached this Court for appointment of an independent Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 read with Section 3(i) (d) of Scheme for appointment of Arbitrator as framed by this Court.

Learned counsel for the applicant submits that since the respondents have failed to respond to the notice, this Court may appoint an independent Arbitrator to adjudicate the dispute between the parties.

I have considered the submission of learned counsel for the applicant and taken note of the arbitration Clause 21 under the Purchase Order dated 23.02.2023. It appears that respondent Nos.2 and 3, who are partners of respondent No.1 partnership firm, have neither chosen to respond to the notice for invoking the arbitration clause nor appeared despite valid service of notice.

In such circumstances and on being satisfied with the plea raised, this Court proposes to appoint Smt. Justice T.Meena Kumari, a former Chief Justice of Meghalaya High Court (residing at Plot No.A-38, H.No.2-2-18/31/C2, Durgabai Deshmukh Colony, Sri Ramachandra Collage Lane, Baghamberpet, Hyderabad-13, Phone No.9849398609), as an independent Arbitrator to adjudicate the dispute between the parties. The proposed Arbitrator is requested to submit her consent and

a declaration in terms of Section 12(1) read with Schedule VI of the Arbitration and Conciliation Act, 1996.

Registry is directed to communicate this order to the proposed Arbitrator.

The matter be listed after two weeks with the response, if any, of the proposed Arbitrator.

Sd/- I. NAGA LAKSHMI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Smt. Justice T. Meena Kumari, a former Chief Justice of Meghalaya High Court (residing at Plot No. A-38, H. No. 2-2-18/31/C2, Durgabai Deshmukh Colony, Sri Ramachandra College Lane, Baghamberpet, Hyderabad – 13, Phone No. 9849398609) **(By Messenger Post) (Along with a Copy of affidavit and material papers)**
2. The Section Officer, O.S. Section, High Court for the State of Telangana at Hyderabad.
3. One CC to Mr. N. Jeevan Kumar, Advocate [OPUC]
4. Two CD Copies

DL/kam

HIGH COURT

DATED:01/08/2025

List after two (02) weeks with the response, if any,
of the Proposed Arbitrator



ORDER

ARBAPPL.No.76 of 2025

DIRECTION

6

06/8/2025