



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

Bench
Sr.No:-
S.L.1-1
[3441]

ARBITRATION APPLICATION NO: 11 of 2019

M/s. Shore View Hospitality Private Limited

...Applicant

Vs.

M/s. PSP Associates and another

...Respondents

Advocate for Applicant:

Mr. VSR Anjaneyulu, Ld. Senior
Counsel appearing vice Ms. Vangala
Sailaja

Advocate for Respondents:

Mr. Sairam Kanakamedala appearing
vice Mr. P. Badrinath

CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR

DATE : 22nd April, 2026.

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This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act of 1996"), seeking the appointment of an arbitrator for adjudication of disputes arising out of and in connection with the Work Order and Work Contract, dated 07.07.2018.

2. Briefly stated, the material facts are as under:

The applicant is a company which claims to be engaged in diverse business activities, including establishment and maintenance of hotels, holiday resorts, etc. It is stated that the applicant purchased land at

Vijayawada and thereafter obtained permission for construction of a hotel under the name and style of "Green Park" Vijayawada.

3. It is stated that during the course of completion of the Hotel construction work, the applicant issued a Letter of Award dated 31.05.2018, for providing Mechanical, Electrical and Plumbing Engineering Services. Pursuant to the Letter of Award, two separate work orders were stated to have been issued for supply of material and execution of works on 07.07.2018, worth Rs.10,80,00,000/-. An amount of Rs.1,10,00,000/- is stated to have been transferred to the account of the respondents, which was agreed to be recovered from the running account. This was done even before the works contract was executed between the parties, as a mobilization advance.

4. The respondents were alleged to have failed in their obligation to perform the works and finally, by virtue of e-mail dated 21.09.2018, expressed their willingness to foreclose the Work Order and Work Contract dated 07.07.2018.

5. Joint measurements were taken by an independent agency and a report dated 17.10.2018 was prepared accordingly.

6. As per the joint measurement report, the applicant claims that the respondents had not executed the work for an amount of Rs.81,51,175/-, which was lying with the respondents as on the date they exited from the contract. It is also stated that the respondents completed the work only to the tune of Rs.28,48,825/-.

7. The applicant is stated to have issued a legal notice, dated 07.03.2019, invoking the arbitration clause in terms of the agreement, after attempts by the applicant for refund of the mobilization advance along with interest, failed.

8. By virtue of a reply notice dated 02.04.2019, the respondents denied their liability and rejected the request of the applicant for reference of the matter to arbitration, hence, the present application under Section 11(5) of the Act, 1996.

9. In the objections filed by the respondents, the stand taken is that the present arbitration application was premature, inasmuch as the pre-arbitral mechanism which was envisaged to be followed in terms of the contract had not been resorted to by the applicant.

10. It was urged that the pre-arbitral mechanism was mandatory and ought to have been followed for the purpose of reference. The arbitration clause, as contained in the agreement, is reproduced hereunder:

“Arbitration: All disputes and differences of any kind whatsoever, arising out of or in connection with the contract, or supply of the material (whether during the supply or after their completion and whether before or after the determination, abandonment or breach of the contract), any claims relating to the meaning of specifications, design, "drawings and instruction herein before mentioned and so as to the quality of materials, of claims, right, matter whatsoever arising out of or relating to this contract be referred to in writing as a notice to be given to the project in-charge as pursuant to this contract, and amicably settled by M/s Shore View Hospitality Pvt. Ltd through friendly negotiations and agreement with the contractor. A written notice specifying the decisions shall be issued within 30 (thirty) days by the M/s Shore View Hospitality Pvt. Ltd.

In case the matters referred to above in the immediately preceding clause cannot be settled amicably and PSP Associates be dissatisfied with the decisions given by the M/s Shore View

Hospitality Pvt. Ltd as above, either party (M/s Shore View Hospitality Pvt. Ltd or PSP Associates) may within 28 (twenty eight) days after receiving the notice of such decisions, give a written notice, requesting that such matters in dispute be arbitrated upon. Such written notice shall specify clearly the matters which are in dispute and such dispute or differences of which such written notice has been given; no other matters shall be entertained upon for the Arbitration.

The Arbitration shall be conducted by a sole Arbitrator who shall be appointed on mutually agreeable basis by both parties (M/s Shore View Hospitality Pvt. Ltd and PSP Associates) within 15 (fifteen) days of giving written notice as aforesaid in immediately preceding paragraph. In case a mutual agreement on appointing such an Arbitrator cannot be reached, both the M/s Shore View Hospitality Pvt. Ltd and PSP Associates shall appoint an Arbitrator of their choice and the two appointed Arbitrators shall further appoint a third Arbitrator, who shall act as Presiding Arbitrator. The proceedings of the Arbitration shall follow the Indian Arbitration and Conciliation Act 1996 or any latest amendments, if any, then in force. There should be no slow down (or) stoppage of work during the intervening period.”

11. Learned counsel for the applicant, on the other hand, has taken a stand in its rejoinder that the pre-arbitral mechanism was not required to be resorted to, inasmuch as the respondents had abandoned and avoided their obligations under the agreement.

12. In other words, the stand taken is that the pre-arbitral mechanism would be enforceable only in a case where the respondents had completed the contract till the end and had not abandoned or foreclosed the contract.

13. Reference is also made to a few e-mails exchanged between the applicant and the respondents to show that the applicant's attempts to discuss issues regarding the contract were summarily rejected, with the respondents reiterating that the matter be deemed closed. In those circumstances, the

applicant urges that the present application is maintainable and not premature.

14. We have heard learned counsel for the parties.

15. It is not denied by both parties that in terms of the arbitration clause in the agreement, there was a pre-arbitral mechanism envisaged, which required a reference to be made in writing by way of a notice to the Project-in-Charge to amicably settle the issue through friendly negotiations.

16. The entire purpose and intent of the said pre-arbitral mechanism was to enable the parties to come to a platform where a settlement could be possible through negotiations, thereby avoiding the rigmarole of contesting claims through arbitration, which is not only expensive but also time-consuming. However, even when a pre-arbitral mechanism is envisaged, relegating the parties to take resort to such a mechanism must not be an empty formality.

17. There must be ample material on record to suggest that the party who objects to the maintainability of the arbitration application as being premature was also keen to have a settlement through the pre-arbitral mechanism and was willing to undertake that process.

18. In the instant case, however, the e-mails referred to suggest that attempts to draw the respondents to the negotiation table had been bluntly rejected by the respondents. The fate of the so-called friendly negotiations

before the Project-in-Charge, in terms of the agreement, would, in those circumstances, be a foregone conclusion.

19. Even in the objections filed by the respondents, not a murmur is made which would suggest, even remotely, that, as on date, the respondents are willing to enter into negotiations to avoid arbitration.

20. It can be seen from the record that disputes have arisen between the parties which are required to be resolved through the mechanism of arbitration. No fruitful purpose would be served, after as many as seven years since the filing of the arbitration application in 2019, by relegating the parties to take resort to the pre-arbitral mechanism.

21. In the opinion of this Court, such a step would be a useless formality and would only prolong the pain and agony of the applicant, who would be deprived of an early resolution of the disputes.

22. Be that as it may, the present arbitration application is allowed. Justice Dr. V. R. K. Krupa Sagar, former Judge of the High Court of Andhra Pradesh, is appointed as an Arbitrator, who shall enter upon the reference and adjudicate upon the disputes arising out of and in connection with Work Order and Work Contract, dated 07.07.2018, and render the Award within the statutory period. The parties shall be free to file detailed claims and counter-claims, before the learned Arbitrator. The learned Arbitrator shall also be entitled to claim the fee as per the provisions of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

No order as to costs. Pending miscellaneous applications, if any, in this application shall stand closed.

A copy of this order be communicated to the learned Arbitrator on the address mentioned herein below:

Justice Dr. V. R. K. Krupa Sagar,
D.No. 4-5-3/5, Chaitanya School Backside,
Navabharath Nagar, IV Line, First Cross Road,
Ring Road, Guntur, Andhra Pradesh – 522 006.
Ph: 98487 64234

DHIRAJ SINGH THAKUR, CJ.

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