

In the High Court of Judicature at Madras

Dated : 10.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.77 of 2017

Strong Engineering Contractors,
through its Managing Partner
Er.Y.Abdul Hameed
No.6, Red Star Building,
Thillai Nagar Main Road,
Tiruchirapalli – 620 018.

.. Petitioner

-vs-

- 1.The Deputy General Manager/General
Southern Railway,
Park Town,
Chennai – 600 003.
- 2.The Chief Administrative Officer
(Construction), Southern Railway,
Egmore,
Chennai – 600 008.

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to adjudicate the disputes raised by the petitioner on 21.2.2015 in the matter of construction of framed structure in Perambur Railway Hospital vide Agreement No.27/Dy.CE/CM/MAS/09 dated 23.10.2009.

For Petitioner : Mr.D.Nellaiyappan

For Respondent : Mr.P.T.Ramkumar

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ORDER

This petition has been filed seeking to appoint an Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondents.

2. The case of the petitioner is that they have been engaged in the field of constructions and earlier they were engaged in several works by the respondents. On 23.10.2009, a contract was entered into between the petitioner and the respondents for construction of framed structure Ground Floor plus 6 Floors in Perambur Railway Hospital. The work was progressed as per the schedule, but the respondents delayed the payment. Thereafter, due to want of funds, the respondents foreclosed unilaterally the contract with Ground Floor plus 3 Floors, inspite of pile foundation and other structure constructed for Ground Floor plus 6 Floors. Final measurements were recorded and the respondents had also accepted the measurements. Despite completion of the contract, the payment for the work done by the petitioner has not been settled. On 21.2.2015, the petitioner sent a demand notice, wherein they requested the respondents for an arbitration. After exchange of communications between the petitioner and the respondents, finally an Arbitral Tribunal was constituted to

adjudicate upon the disputes. On 19.8.2015, the petitioner has placed the claim to the respondents. On 30.7.2015, an Arbitral Tribunal was constituted to adjudicate upon the reference. Subsequently, the Arbitral Tribunal did not commence its proceedings. Since the Arbitral Tribunal delayed the proceedings, on 09.3.2016, the petitioner requested the respondents to appoint an outside Arbitrator to adjudicate upon the disputes raised by the petitioner. Despite receipt of the same, the respondents are kept quiet. Hence, the present petition seeking to appoint Sole Arbitrator.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner submits that the three member Arbitral Tribunal constituted earlier did not even commence its proceedings into the first step and therefore, it is meaningless to keep the matter pending before the Arbitral Tribunal and prays for appointment of Sole Arbitrator.

5. The learned counsel for the respondents submits that any independent Arbitrator may be appointed as requested by the petitioner to

adjudicate upon the disputes between the parties.

6. When there is a failure on the part of the Arbitral Tribunal to act and it is unable to perform its function either *de jure* or *de facto*, it is open to a party to the arbitration proceedings to approach the Court to decide on the termination of the mandate. The existence of arbitration clause, disputes having arisen between the parties and the jurisdiction of Chennai Courts are not in dispute.

7. I, thus, by consent appoint Mr. Justice M. Thanikachalam, a retired Judge of this Court, as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High Court Arbitration Centre is fixed on 03.04.2017 at 10.30 A.M.

8. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(H.G.R., ACJ.)
10.03.2017

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Acting Chief Justice

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