

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 19.06.2017****CORAM****THE HONOURABLE DR. JUSTICE ANITA SUMANTH****O.P.NO.81 OF 2017**

M/s.Railone Projects Pvt. Ltd.,
represented by its Authorised
Signatory

Mr.I. Mallikarjuna Rao,
No.339, Arora Colony-II,
Road No.3, Banjara Hills,
Hyderabad 500 034

.... Petitioner

Vs

1. The Chief Engineer/CN/
South/MS Southern Railway,
Egmore, Chennai 600 008.

2. The Deputy Chief Engineer/
Gauge Conversion/Southern Railways,
Tiruchirapalli 620 001

.... Respondents

Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 praying for appointment of an independent and impartial Arbitrator to hear and decide the disputes between the petitioner and the respondents in accordance to the section 12(5) of the amended Arbitration and Conciliation Act, 1996 arising out of the Agreement dated 06.01.2014 as set out above and to complete the Arbitration Proceedings within the stipulated time decided by this Court.

for Petitioner : M/s. K. Aparna Devi

for Respondent : Mr.P.T.Ramkumar

ORDER

This petition is filed praying for the appointment of an independent Arbitrator to hear and decide disputes between the Petitioner and the Respondents arising out of Agreement dated 06.01.2014 and to complete proceedings for arbitration within a time frame stipulated by this Court.

2. At the outset, an objection was raised by the learned counsel for the respondent, Mr.P.T.Ramkumar, to the effect that the petitioner has moved the Delhi High Court for relief under section 9 of the Arbitration and Conciliation Act (in short 'Act') and the same constitutes a bar to the filing of the present petition before this Court.

3. He would rely on the provisions of section 42 of the Act reading thus;

'42. Jurisdiction. - Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and in no other court.'

4. This objection does not survive in the light of the judgment of the Supreme Court in the case of *State of West Bengal and others Vs. Associated Contractors ((2015) 1 Supreme Court Cases 32)* to the effect that only applications filed under section 9 of the Act would come within the ambit of section 42 of the Act.

5. Moreover the power under section 11(5) of the Act is exercised by Chief Justice or his /her designate who do not constitute a 'Court' as defined under section 2(1)(e) of the Act reading thus;

'(e) "Court" means-
(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;'

The preliminary objection raised by Mr. Ramkumar is thus rejected.

DR. ANITA SUMANTH, J.

msr

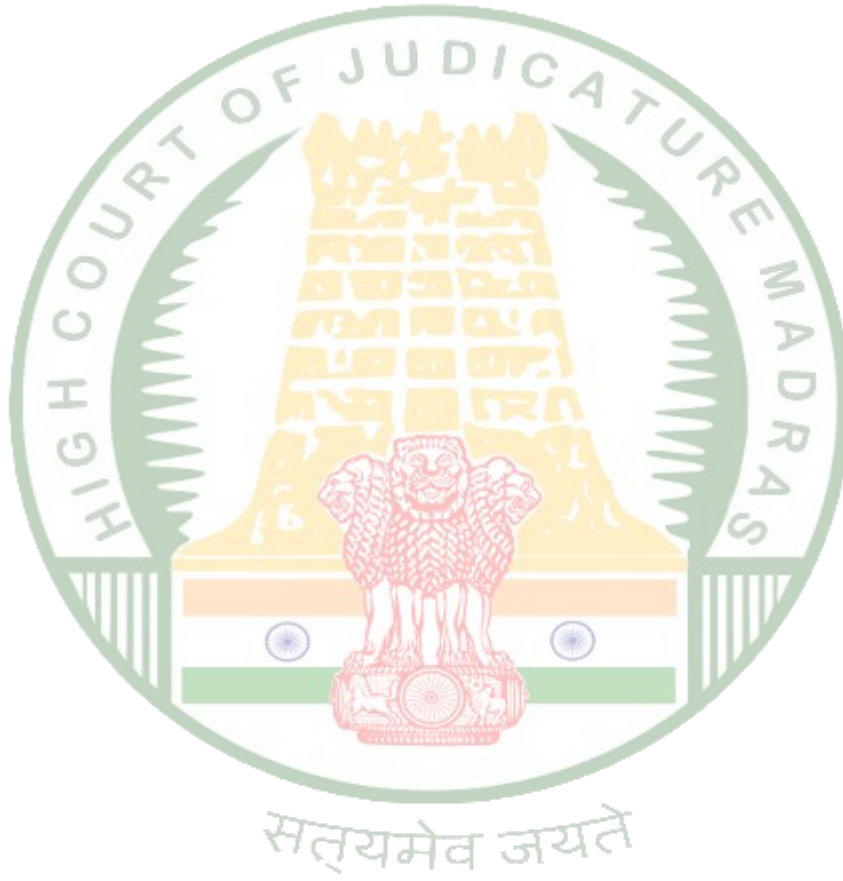
6. I, thus, appoint Mr.P.Ganesan, Retired District Judge, No.778, Judges Colony, Kakithapuram 4th Street, S.Kolathur, Kovilambakkam, Chennai 600 117, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties and after issuing notice to the parties and upon hearing them, endeavour to pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both parties equally. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

7.The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

19.06.2017

Index:Yes/No
msr

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