

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

and

THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.S.A.Nos.134 & 135 of 2017

Malu Sleepers Limited,
(Formerly Malu Sleepers Private Limited)
represented by its Managing Director,
No.8, 1st Main, Gandhi Nagar,
Bangalore - 560 009.

.. Appellant in both appeals/
petitioner in both
O.P.nos.3 & 422 of 2005

vs

1.The Union of India,
rep. by the Chief Engineer,
Southern Railway,
Park Town,
Chennai - 3.

2.Dr.G.Narayanan
Sole Arbitrator,
Chief Engineer/Construction,
Southern Railway,
Chennai - 8.

.. Respondents in both appeals/
Respondents in both
O.P.nos.3 & 422 of 2005

Appeals filed under Order XXXVI, Rule1, of Original Side Rules and Sec37(1) (1) of Arbitration and Conciliation Act, 1966 read with Clause 15 of Letters Patent Act against the common order dated 03.08.2016 in O.P.No.3 of 2005 and O.P.No.422 of 2005 respectively on the file of the Ordinary Original Civil Jurisdiction of this Court.

For Appellant in .. Mr.A.L.Somayaji
both the Appeals Senior Counsel
 for Mr.Amalaraj S.Penikilapatti

For Respondents .. Mr.R.Thiagarajan
in both the Appeals Senior Counsel
 for Mr.P.T.Ram Kumar,
 Senior Central Govt., Standing
 Counsel for Railways.

* * * * *

COMMON JUDGMENT

(Delivered by M.SUNDAR, J.)

This is a common judgment in these Intra Court appeals i.e., O.S.A.Nos.134 & 135 of 2017.

2. Both these Intra Court appeals are directed against a common order dated 03.08.2016 made by a learned Single Judge of this Court in O.P.Nos.3 & 422 of 2005.

3. Both the aforesaid Original Petitions (O.P.Nos.3 & 422 of 2005) were filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A & C Act" for brevity). In the Original Petitions arising out of the same factual matrix, two distinct Awards passed by the learned Arbitrator between the parties with regard to two distinct periods were called in question.

4. After hearing both sides, both the Original Petitions were disposed of by the learned Single Judge vide common order dated 03.08.2016, which is called in question before us in these Intra Court appeals.

5. When these appeals are taken up for hearing post notice in the presence of counsel for both sides, Mr.Amalaraj S.Penikilapatti, learned counsel appearing on behalf of the appellant in both these Intra Court appeals made a request to this Court that he may be permitted to withdraw both these Intra Court appeals, but would seek leave to approach the appropriate authority under Interest on Delayed Payments to Small Scale and Ancillary Industries Undertakings Act, 1993 (hereinafter referred to as "1993 SSAI Act" for brevity).

6. To this request, Mr.R.Thiagarajan, learned Senior Counsel leading Mr.P.T.Ram Kumar, counsel on record for the respondents/Southern Railways in both these Intra Court appeals

fairly submits that he does not oppose the request made by the learned counsel for the appellant for withdrawal with the leave as aforesaid.

7. Therefore, we pass the following orders:

(a) Both these Intra Court appeals viz., O.S.A.Nos.134 & 135 of 2017, stand withdrawn with leave set out in the succeeding paragraph infra. To be noted, learned counsel for appellant has made necessary endorsement in Court records in this regard.

(b) The appellant in these Intra Court appeals will have leave and liberty to approach the appropriate authority under Interest on Delayed Payments to Small Scale and Ancillary Industries Undertakings Act, 1993 (1993 SSAI Act) in accordance with the statute, before the authority specified under the Act.

(c) It is brought to our notice that the authority specified is under Micro, Small & Medium Enterprises Development Act, 2006. However, we do not delve into that aspect of the matter in the light of the nature of this order.

(d) As and when the appellant in these Intra Court appeals approaches the authority under 1993 SSAI Act, the same shall be dealt with in accordance with the statute and in accordance with the time frame set out thereunder.

(e) Though obvious, we make it clear that all the questions raised before the Arbitral Tribunal, learned Single Judge and now before us are left open.

(f) For absolute clarity, we make it clear that as and when petitions are brought up by the appellant in these Intra Court appeals before the authority under 1993 SSAI Act, the same shall be decided by the said authority untrammelled and uninfluenced by anything that has been said in the Arbitral Award of the Tribunal, order of the learned Single Judge dated 03.08.2016 in O.P.Nos.3 & 422 of 2005 and observations on merits of the matter if any, the exception being the leave and liberty that

we have granted.

8. At this juncture, learned counsel appearing for the appellants in these Intra Court appeals submits that he would approach the authority under 1993 SSAI Act within two months from today. Learned counsel for the appellant is permitted to do so. This has to be read in conjunction with paragraphs 7(d) supra.

9. With the above observations and directions, both these Intra Court appeals are disposed of as withdrawn with the leave and liberty as aforesaid. Considering the nature of the matter and the trajectory of the proceedings, there will be no order regarding costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+6cc to Mr.Amalaraj, Advocate, S.R.No.

+1cc to S.Penikilapatti Mr.P.T.Ram Kumar, Senior Central
Govt., Standing Counsel for Railways., S.R.No. 75652

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GR (CO)
TR(22/11/2017)

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