

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.124 of 2018

M/s.Premco Rail Engineers Limited
Axis Multi Complex, Cf-9, 4rd Floor,
Opp. Hometown Mall,
Action Area 1C, New Town,
Rajarhat, Kolkata-700 155.

.. Petitioner

Vs.

Kamarajar Port Limited,
(Erstwhile Ennor Port Limited),
P.T.Lee Chengalvaraya Naicker Maaligai,
First Floor, No.23, Rajaji Salai,
Chennai-600 001.

.. Respondent

* * *

Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint any competent person as a Sole Arbitrator to adjudicate upon the dispute arisen between the petitioner and the respondent.

सत्यमेव जयते
* * *

For Petitioner : Mr.Abitha Banu

For Respondent : Mr.Manoj Menon
for M/s.Menon, Karthik & Mukundan

ORDER

This petition seeks appointment of a Sole Arbitrator to adjudicate upon the dispute arisen between the petitioner and the respondent.

2. The petitioner has stated that they are in the business of Railway Infrastructure contracts and in the tender floated by the respondent, they have been awarded with the Works Contract on 30.08.2011 to the tune of Rs.9,39,38,025/-. It is stated that in terms of the Contract, the petitioner submitted the Performance Bank Guarantee dated 21.09.2011. The petitioner was handed over only a part of the site, wherein, they had executed the work to the value of Rs.6.87 Crores against the contract value, i.e., Rs.9.40 Crores and the work was completed by the petitioner on 27.06.2014. Since a portion of the site was not handed over to them, the petitioner could not utilize the entire material procured for the project and there were surplus materials available at the site. Hence, for transporting, warehousing and keeping vigilance of the surplus materials, the petitioner incurred huge expenses. It is also submitted that there was a delay in releasing the payment towards the final bill submitted by the petitioner. The petitioner also claimed overhead profit, since there was a reduced work on account of non-availability of site of the respondent. It is further alleged that the respondent failed to release the Bank Guarantee (BG) till 26.09.2016, owing to which, the petitioner incurred additional bank charges of Rs.10,53,280/-. Hence, the petitioner had submitted a representation to the respondent on

06.12.2016 raising certain claims, for which, the respondent responded in the negative vide its reply dated 16.02.2017.

3. Since the Contract Agreement provides for arbitration under Clause 16.3., invoking the said clause, the petitioner sent a letter dated 06.05.2017 seeking the respondent to appoint an Arbitrator. In reply, the respondent called the petitioner for a meeting to solve the issue amicably, which proved futile. As a result of which, the petitioner vide its letter dated 04.09.2017 forwarded a panel of three names to the respondent for appointing as one of the Arbitrators on their side, as provided under Clause 16.3.(ii)(b). Surprisingly, the respondent sent a letter dated 26.09.2017, indicating that it is not in favour of arbitration process. Hence, the present petition.

4. The respondent, denying the allegations of the petitioner, filed its counter affidavit, wherein, it is stated that the prayer of the petitioner for appointment of a sole Arbitrator cannot be granted. It is stated that the respondent sent a letter dated 04.04.2018 to the petitioner consenting for appointing Mr.S.Balanchandran, one of the nominees of the petitioner, as the Arbitrator. The said letter is annexed with the counter affidavit, which contained a panel of three members to be appointed as one of the Arbitrators on behalf of the

respondent, as mandated under Clause 16.3.(ii)(a) of the Contract Agreement.

5. When the matter is called for hearing today, both the learned counsels agreed that Mr.Rajamani, one of the nominees of the respondent, be appointed as Arbitrator on behalf of the respondent.

6. It is pertinent to state that Clause 16.3.(i) mandates that the arbitral Tribunal shall consist of three arbitrators. Sub-clause (ii)(c) of Clause 16.3. states that the third Arbitrator shall be chosen by the two Arbitrators, who shall act as Presiding Arbitrator.

7. In view of the above, this Court appoints Mr.S.Balanchandran, Retd. CEE/NFR, Contract No.90876 97985, residing at No.46/4H, Chennai Pattinam, Ammapettai, Kanchipuram District, and Mr.Rajamani, Retd. CCRS (IRSE), Chennai, as the Arbitrators, to enter upon reference in the disputes inter se the parties. The said Arbitrators, as mandated under Clause 16.3.(ii)(c) of the Contract Agreement, shall choose the third Arbitrator to act as a Presiding Arbitrator.

8. The Arbitral Tribunal may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The Arbitral Tribunal is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally, as provided under Clause 16.3(viii) of the Contract Agreement.

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

18.04.2018

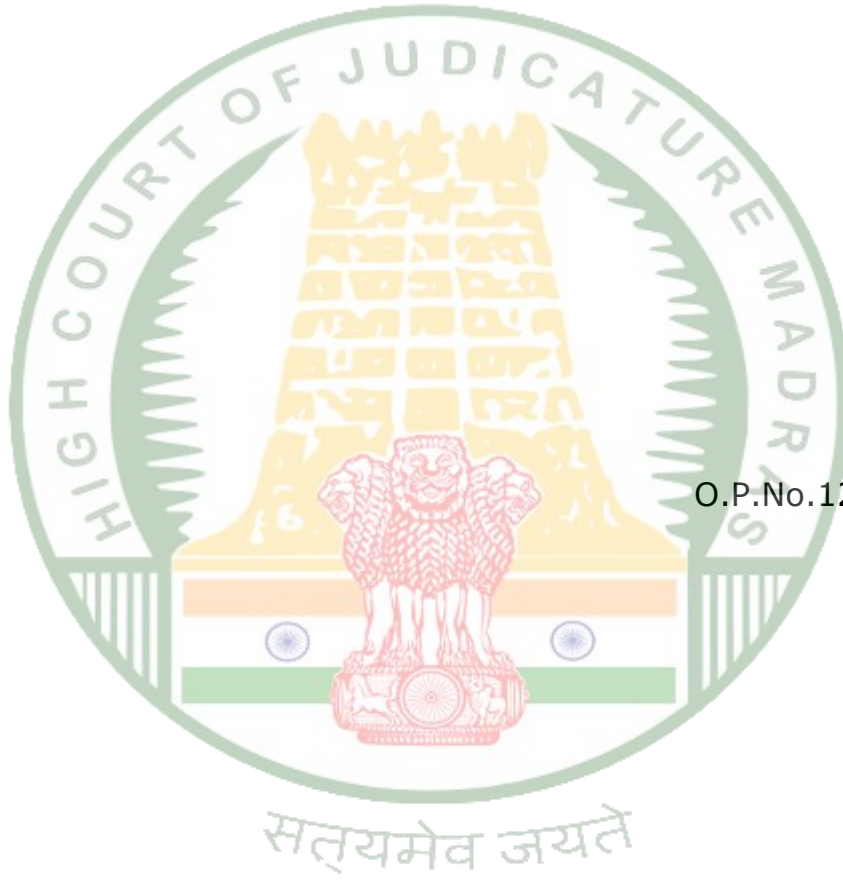
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PUSHPA SATHYANARAYANA, J.

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