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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION (L.) NO.179 OF 2019

Airwide Express Cargo Pvt.Ltd.	..Applicant
Vs.	
The Union of India through Divisional Railway Manager (Commercial) & Ors.	..Respondents

**WITH
ARBITRATION PETITION (L.) NO.463 OF 2019**

Airwide Express Cargo Pvt.Ltd.	..Petitioner
Vs.	
Union of India through the Divisional Railway Manager (Commercial) CR. & Ors.	..Respondents

Mr.Mutahhar Khan i/b. Mr.Rajesh Gupta for Petitioner.
Mr.T.J. Pandian for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 3rd MAY, 2019.

P.C.:

1. Heard learned Counsel for the applicant/petitioner and learned Counsel for the respondents.

2. These are two proceedings. Arbitration Application (L.) No.179 of 2019 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") praying for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties

as arising under the agreement dated 24 April 2019 entered between the parties in regard to the Parcel Vans. Arbitration Petition (L.) No.463 of 2019 is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby praying for the interim reliefs pending the arbitral proceedings.

3. After these proceedings were heard for sometime, learned Counsel for the applicant/petitioner points out that his client is agreeable that a sole arbitrator be appointed from the office of respondents-railways and in terms of proviso of Sub-Section (5) of Section 12, an agreement between the parties is entered into and accordingly the requirements of Section 12 accordingly are being waived by the applicant/petitioner. This course of action is also not objected by Mr.Pandian, learned Counsel for the respondent-railways who submits that accordingly Mr.K.N. Singh, Deputy COM (Goods), would be appointed as an arbitrator to adjudicate the disputes between the parties. It is also agreed between the parties that the Section 9 petition as filed would be treated as an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal.

4. In view of the consensus between the parties, both these proceedings are required to be disposed of. Hence the following order:-

ORDER

- (i) By consent of the parties, Mr.K.N. Singh, Deputy COM (Goods) is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 24 April 2019;
- (ii) The petition as filed under Section 9 of the ACA is permitted to be treated as an application under Section 17 of the ACA to be decided by the learned sole arbitrator as expeditiously as possible.
- (iii) The learned sole arbitrator shall consider the prayers of the applicant/petition for any ad-interim reliefs and in that regard, the parties can be heard even before reply affidavit is filed, if so necessary;
- (iv) No doubt the respondents ought to be granted an opportunity to file an affidavit opposing reliefs as made in Section 17 application however, it would be open for the arbitral tribunal to consider the facts and circumstances and accordingly if circumstances so warrant consider ad-interim prayers of the petitioner on its own merits;
- (v) All contentions of the parties on all issues including merits of the matter are expressly kept open.
- (vi) The applicant/petitioner is permitted to approach the arbitral tribunal on 4 May 2019 at 11.00 a.m.
- (vii) Arbitration Application (L.) No.179 of 2019 and Arbitration Petition (L.) No.463 of 2019 are accordingly disposed of in the above

terms. No costs.

(viii) The learned arbitrator shall act on an authenticated copy of this order.

(ix) Mr.Pandian, learned Counsel for respondent shall inform learned Counsel for the applicant office address of the learned arbitrator during the course of the day.

[G.S. KULKARNI, J.]