

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.591 of 2019

M/s.Deepak & Co.
rep. by its Power Agent Shri Jiwan Singh,
8690-91, Near St. Anthony's School,
Desh Bandhu Gupta Road,
Pahar Ganj,
New Delhi 0110 055. .. Petitioner

Vs.

1. The Chairman-cum-Managing Director,
Indian Railway Catering & Tourism Corporation Ltd.,
B-148, 11th Floor, Statesman House,
Barakhamba Road, New Delhi.
2. The Chief Commercial Manager,
Southern Railways,
Head Quarters Office,
Commercial Branch Park Town,
Chennai-600 003. .. Respondents

* * *

Prayer : Petition filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to appoint a Sole Arbitrator to adjudicate the disputes/claims of the petitioner as provided under the Tripartite Agreement dated 05.09.2017 between the petitioner and the first and second respondents.

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For Petitioner : Mr.V.Adhivarahan

For Respondents : Mr.V.G.Sureshkumar
for Mr.P.T.Ramkumar

ORDER

This Original Petition is filed seeking for appointment of a Sole Arbitrator to adjudicate the disputes/claims of the petitioner with the first and second respondents in terms of the Tripartite Agreement dated 05.09.2017.

2. The petitioner was the successful bidder for 'On Board' catering services in various trains, including the Train No.12687-88. Thus, it was awarded the contract for a sum of Rs.1,11,00,000/- spanning for a period of five years from 24.08.2014 by the second respondent. Though the frequency of the train services has been increased, owing to the act of the respondents in placing a Seating Cum Luggage Rake in the middle of the train, the petitioner suffered huge loss, which has to be compensated only by the respondents. The first respondent was required to take over the contract subsequent to 2017 Policy and thus, tripartite agreement dated 05.09.2017 was executed between the petitioner and the respondents. The petitioner also claimed interest on the alleged loss suffered by them.

3. Since the efforts of the petitioner to get the loss

compensated proved futile, the petitioner invoked the arbitration clause vide letter dated 09.07.2018 and nominated a retired District Judge as their arbitrator. However, the respondents did not give consent within the stipulated period for the nomination. Hence, the petitioner filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court, which was withdrawn on 25.10.2018 with liberty to file a fresh petition. In the said application, the Standing Counsel for the respondents raised jurisdiction issue. The petitioner once again issued arbitration notice requesting the respondents to either accord consent to their nomination or nominate their own Arbitrator. The same also did not yield any response. Thus, the petitioner is before this Court in this petition.

4. Heard the learned Standing Counsel for the respondents, who produced a list of empaneled Arbitrators and requested for the appointment of any one of the learned Arbitrators from the list. Accordingly, learned counsel for the petitioner consented for appointment of Hon'ble Mr. Justice S.L. Bhayana, a retired Judge of the Delhi High Court, as the sole arbitrator.

5. Considering the submissions of the learned counsels for the

parties, this Court appoints Hon'ble Mr.Justice S.L.Bhayana, a retired

PUSHPA SATHYANARAYANA, J.

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Judge of the Delhi High Court, residing at A-236, Ground Floor, New Friends Colony, New Delhi-110 025 (Phone No.98713 00028) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator 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 learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

6. The Original Petition is ordered accordingly. The parties shall bear their own costs.

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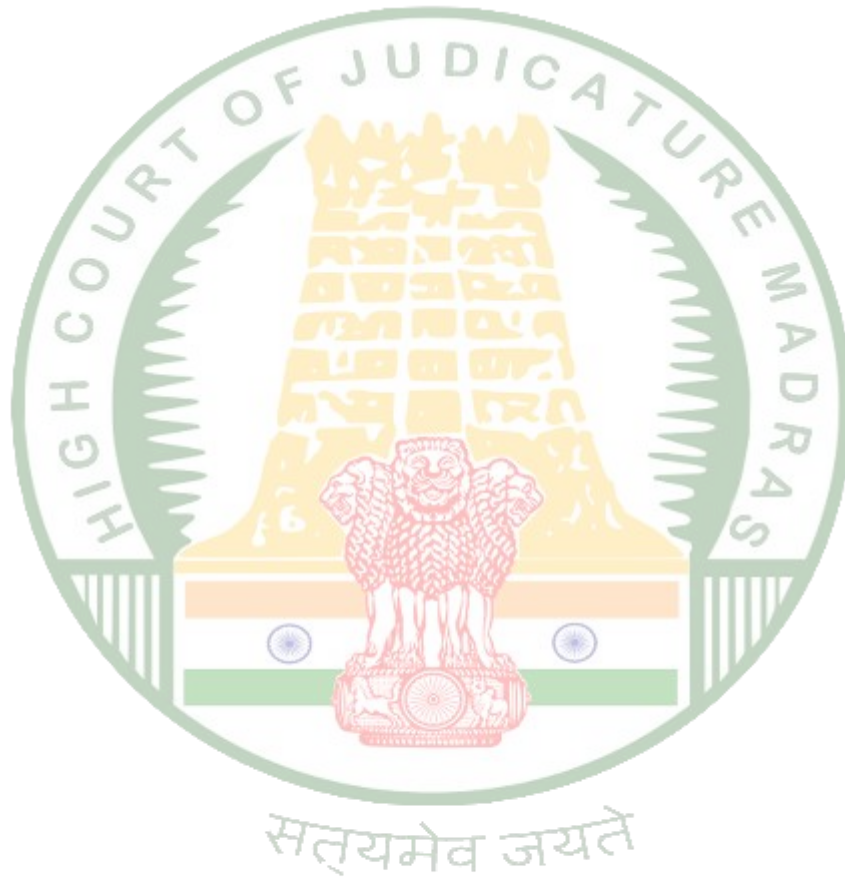
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Index : Yes / No

Internet : Yes

Speaking Order/Non-Speaking Order

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