

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P. No.581 of 2019

and

A.No.5285 of 2019

M/s.Sanwariya Groups,
Rep by its Partner Mr.S.N.Sathish Kumar,
No.40/D, 5th Main, Yadavagiri,
Mysore, Karnataka – 570 020.

.. Petitioner

-VS-

1.The Union of India,
Rep by the General Manager,
Southern Railway, Park Town,
Chennai – 3.

2.The Chief Administrative Officer (Construction),
Periyar EVR High Road,
Construction Complex,
Southern Railway, Egmore,
Chennai – 8.

3.The Deputy Chief Engineer (Construction-III),
Southern Railway, Arasaradi,
Madurai – 10.

.. Respondents

Prayer: Petition filed under Section 11(5) of the Arbitration & Conciliation Act, 1996 to appoint an independent Arbitrator and refer all the claims arising out of the Agreement No.31/Dy.CE/CN/I/MDU/AIC/2017 dated 23.01.2017 to Arbitration.

For Petitioner : Mr.Amalaraj S.Penikilapatti

For Respondents : Mr.P.T.Ramkumar
Standing counsel for Railways

ORDER

This petition seeks to appoint an independent Arbitrator and refer all the claims arising out of the Agreement No.31/Dy.CE/CN/I/MDU/AIC/2017 dated 23.01.2017 to Arbitration.

2. The case of the petitioner is that the respondents invited open tenders/bids for the work of "Proposed new BG Line between Madurai and Tuticorin (via) Aruppukottai – Milavittan – Melmarudur Section – Construction of Minor Bridges of various spans with PSC/RCC boxes including protective works etc. from CH: 14000 to CH: 18700". The petitioner succeeded in the above tender and the respondents awarded the contract to the petitioner. Subsequently, the Form of Agreement No.31/Dy.CE/CN/I/MDU/AIC/2017 dated 23.01.2017 was executed. The said contract works were originally stipulated to be completed on or before 03.05.2017. Due to the non-completion of the Land Acquisition Proceedings by the railways and also other lapses attributable to the Railways, the petitioner suffered severe losses and also could not complete the work. Thereafter, the respondents issued

Termination Notice dated 26.03.2019. In spite of repeated requests of the petitioner to revoke the termination notice dated 26.03.2019, the respondents failed to revoke the same. Hence, the petitioner sent a notice dated 22.04.2019 to the respondents requesting to appoint an independent arbitrator and to refer all the claims and disputes to arbitration. As there was no response, the present petition has been filed.

3. When the matter is taken up for hearing, both the parties agreed for appointment of the arbitrator out of the list furnished by the respondents vide letter No.G.16/DGM/ARB/CN/453 dated 02.08.2019. Both the counsels agreeable for appointing any of the three officers from the list. Accordingly, the following officers are appointed as Arbitrators to constitute the Arbitral Tribunal :

1. Shri K.J.S. Naidu, Rtd. CRS/SBC (DOR: 30.04.2011)
2. Shri S.Muralidharan, Rtd. CSTE/SER/GRC (DOR: 01-01-09 VR)
3. Shri Arun Bhagra, Rtd. AGM/SCR (DOR: 30.06.2010)

4. The Arbitrators appointed above shall enter reference and adjudicate the disputes *inter se* the parties. The Arbitral Tribunal may, after issuing notice to the parties and upon hearing them, pass an

PUSHPA SATHYANARAYANA, J.

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award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrators are at liberty to fix their remuneration and other incidental expenses.

5. The learned counsel for the petitioner also undertakes to extend the Bank Guarantee given, which is in force till 28.03.2020, till the completion of the arbitral proceedings.

6. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs. Consequently, A.No.5285 of 2019 is also closed.

08.08.2019

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