

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

O.P. Nos.1151 & 1152 of 2018

M/s.Transtonneltroy – Afcons JV
comprising of

1. M/s. Transtonneltroy Limited,
4/1, Lunganskaya Street,
Moscow, 115583, Russia.
2. M/s.Afcons Infrastructure Limited,
AFCONS House, 16, Shah Industrial Estate,
Veera Desai Road,AzadNagar (P.O.),
Post Box No.11978, Andheri (W),
Mumbai 400 053,
represented by Mr.S.Sivamani .Petitioners in both OPs

-VS-

M/s.Chennai Metro Rail Limited,
Adminsitratve Building,
Chennai Metro Rail Depot,
Poonamallee High Road,
Koyambedu, Chennai 600 107
represented by Chief General Manager .. Respondent in both OPs

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to appoint the existing three member Arbitral Tribunal adjudicating the claims 1 to 3 to adjudicate the cost Claim No.3A .

For Petitioners in
both OPs

: Mr.G.Masilamani, Sr. Counsel
for Mr.D.Balaraman

For Respondent in
both OPs : Mr.R.Senthilkumar
for M/s.DUA Associates

ORDER

These Original Petitions have been filed by the petitioners seeking to appoint the existing three member Arbitral Tribunal adjudicating the claims 1 to 3 to adjudicate the cost Claim No.3A .

2. The respondent awarded the work of Design and construction of Underground Stations at Shenoy Nagar, Anna Nagar East, Anna Nagar Tower and Thiruangalam and Associated tunnels under contract No.UAA-05 to the petitioner under Letter of Acceptance dated 28.12.2010 for a contract price of INR1030,99,50,000/-.

2.1. Pursuant to the abvoe, a formal contract was entered between the petitioner and the respondent on 31.1.2011. Since the respondent failed to fulfil their obligation agreed under the contract the disputes with respect to claim Nos.1 to 3 were referred before Arbtrital Tribunal as contemplated by the Contract.

2.2. On behalf of the petitioner, Mr.P.Sridharan, Retired chief Engineer and on behalf of the respondent, Mr.G.Sivakumar, retired Chief Engineer respectively were appointed as nominee arbitrators and both arbitrators appointed Mr.K.Dharmalingam, Retired Chief

Engineer in O.P.No.1152 of 2018 and Mr.J.C.Shah, Retired Chief Engineer in O.P.No.1151 of 2018 as Presiding Arbitrators and accordingly the Arbitral Tribunal has been constituted and the said tribunal is adjudicating the above said three claims.

3. In the meanwhile dispute arose between both parties in respect of claims made on account of Extended stay/prolonged duration of contract as per EOT application No.2, which is Claim No.3A. The petitioner referred the said claim to the respondent vide its letter dated 28.11.2017 and requested the respondent for amicable settlement in terms of Clause 20.5 to resolve the said disputes. Further, the petitioner vide its letter dated 31.3.2018 sent to the respondent has pointed out the necessity for adjudication of claim No.3A along with claims No.1 and 2 and requested to refer the claim No.3A to the arbitral tribunal adjudicating claims Nos.1 to 3, to which the respondent raised certain objections.

4. Learned counsel for the petitioner would submit that Claim No.3A is an integral and consequential part of the claims 1,2 and 3. Hence it is necessary to adjudicate the present claim viz Claim 3A by the same Arbitral Tribunal. Therefore Claim No.3A can be referred to arbitration for an early resolution of the dispute and prays to pass

orders appointing the existing three member Arbitral Tribunal adjudicating the claims 1 to 3 to adjudicate the cost claim No.3A.

5. Heard learned counsel appearing for the petitioners and learned counsel appearing for the respondent.

6. The admitted fact is that both parties have arbitration pending with regard to the same contract. The arbitration dispute now raised is continuation of the previous dispute with regard to extension of time in respect of claim No.3A.

7. Considering the continuity of the proceedings and speedy disposal and resolution of the arbitral dispute, the petitioner seeks to appoint the same arbitral tribunal to go into this issue.

8. The respondent has certain objections to continue the same arbitral tribunal.

9. After advancing the arguments, the parties have consented to nominate the same nominee arbitrators chosen by them respectively in the previous arbitration.

10. A Suggestion is made that a retired Judge of this Court be appointed as a Presiding Arbitrator. Thereafter, by consensus, the parties agreed to appoint Justice K.P.Sivasubramaniam, Retired Judge of this Court as the Presiding Arbitrator.

11. Accordingly, this Court appoints, the nominee arbitrators appointed by petitioner as well as respondent viz., Mr.P.Sridharan, Retired Chief Engineer, High Ways and Mr.G.Sivakumar, Retired Chief Engineer, HighWays as arbitrators in both the cases.

12. By consent of both parties, this Court appoints Justice Mr.K.P.Sivasubramaniam, Former Judge of this Court, residing at No.47, Pulla Avenue, Shenoy Nagar, Chennai-30 as a Presiding Arbitrator in both the cases.

13. The Arbitral Tribunal shall adjudicate upon the disputes interse the parties and pass an award as expeditiously as possible, and in any event, within the statutory period from the date of first sitting. The learned Arbitrators are at liberty to fix their remuneration and other incidental expenses which shall be borne by both parties equally.

M.GOVINDARAJ, J.

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14. The Original Petitions are disposed of accordingly.

01.02.2019

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Index:Yes/No

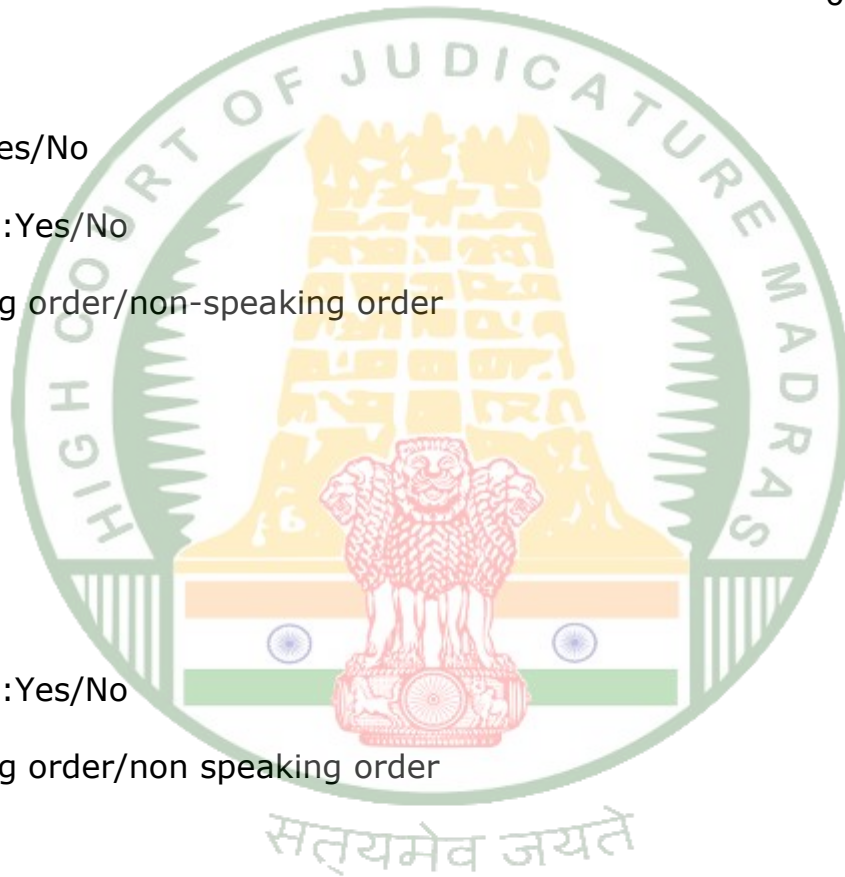
Internet:Yes/No

Speaking order/non-speaking order

Internet:Yes/No

Speaking order/non speaking order

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