

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.304 of 2020

M/s.ARSS Infrastructure Projects Ltd.,
Mancheswar Industrial Estate,
Bhubaneswar, Odisha

... Petitioner

Vs.

Union of India, Department of Railway
Rep.through General Manager,
Southern Railway, Egmore,
Chennai 600 008.

... Respondent

PRAYER: Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment a Sole arbitrator from the panel of this Hon'ble retired High Court Judges.

For Petitioner : M/s.K.Sathish Kumar

For Respondent : Mr.P.T.Ramkumar
Standing Counsel

ORDER

This petition has been filed to appointment a Sole arbitrator from the panel of this Hon'ble retired High Court Judges.

2. The respondent issued tender for construction of Gauge Conversion between Pollachi and Pallaghat Junction - proposed reconstruction of Minor bridges, earthwork, excavation in cuttings forming bank and the protection works from CH: 121950 to 137000 in between Pollachi Junction and Kinattukadavu stations - Rechi. The petitioner applied and participated in the said tender and the petitioner and respondent entered an agreement dated 10.12.2008 vide its agreement No.91/CN/08 and the value of the agreement was fixed as Rs.14,74,02,482/-. The dispute arose between the parties regarding price variation amount, amount recovered on account of penalty and overheads and profit @ 20%.

3. The learned counsel for the petitioner submitted that the petitioner had invoked "No claim" with a notice under Clause 64(1) of GCC which is noted in the letter dated 16.11.2019. As per GCC the Railway has to provide panel of arbitrators within 60 days, however till now Railway has not notified the panel of arbitrators, hence the present application. Admittedly the parties are governed by the contract though the arbitration is governed by specific conditions stipulated in general conditions of contract, this Court is of the view that as the respondent has failed to nominate its arbitrator as per the contract, the petitioner has no other option except to refer the dispute to arbitration.

4. In view of the aforesaid, with the consent of the learned counsel for both parties, I appoint Mr.S.Jagadeesan, a retired Judge of this Court, No.23,

(New No.53), III Main Road, Gandhi Nagar, Adyar, Chennai- 20, as the Sole Arbitrator, to enter upon reference and, 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. Fees of the learned Arbitrator shall be fixed as per the schedule of the Act, which shall be borne by the parties equally.

5. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

13.08.2020

Index: Yes/No

Internet : Yes/No

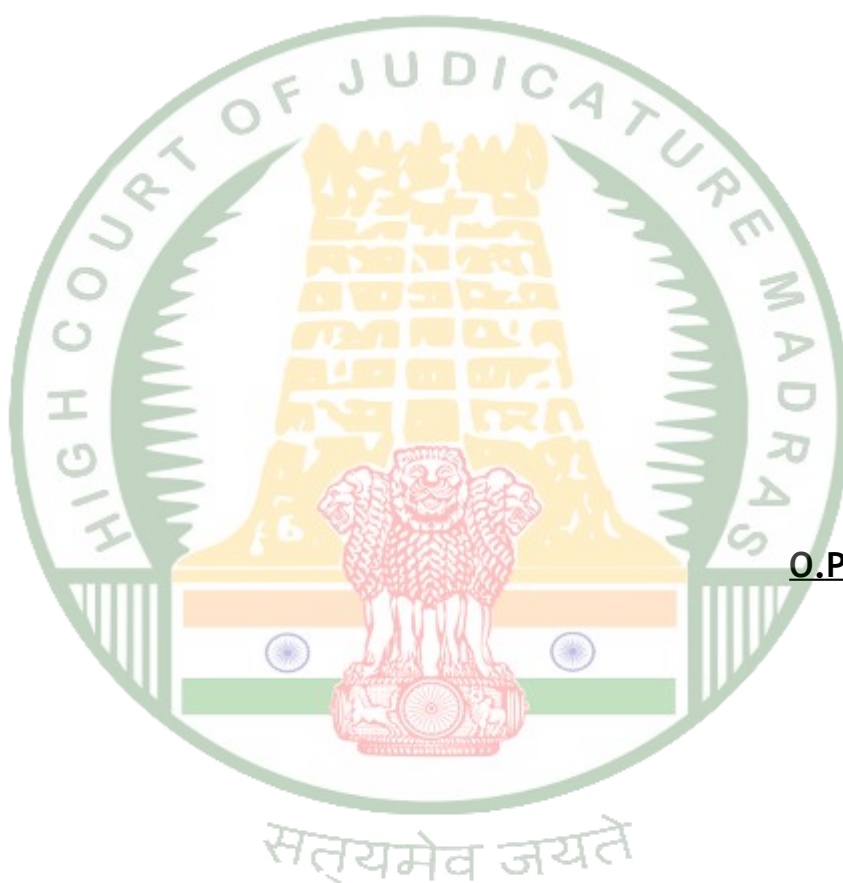
Speaking order/Non speaking order
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N.SATHISH KUMAR, J.

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