

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
O.P.No.333 of 2020

The Indian Institute of Technology Madras
An academic and research Institute
Constituted under the Institutes of Technology Act 1961
Sardar Patel Road, Chennai 600 036
Tamil Nadu
Rep.by the Associate Dean (IC & SR)

... Petitioner

Vs.

M/s.Midway Services
Rep.by its Sole proprietor
Mr.Gurpreet Khurana
SCO 726 Miliap Road Central Town
Jalandhar Punjab 144 001

... Respondent

PRAYER: Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 praying to appoint an arbitrator on behalf of the respondent under Section 11(6) of the Act with a direction to appoint the Presiding Arbitrator within 15 days, in order to resolve the disputes and differences arising between the parties under the open tender No.OEC/RAJ/07/2016 dated 02.09.2016 and the purchase order No.OEC/RAJI/2016/1156/SPLX/825 dated 27.02.2017 and to direct the respondent to pay the cost of this petition.

For Petitioner : M/s.Hema Srinivasan

For Respondent : No appearance

ORDER

This petition has been filed to appoint an arbitrator on behalf of the respondent under Section 11(6) of the Act with a direction to appoint the Presiding Arbitrator within 15 days, in order to resolve the disputes and differences arising

between the parties under the open tender No.OEC/RAJ/07/2016 dated 02.09.2016 and the purchase order No.OEC/RAJI/2016/1156/SPLX/825 dated 27.02.2017 and to direct the respondent to pay the cost of this petition.

2. This Court by order dated 04.10.2019 in OP.No.473 of 2019 appointed one Mr.K.D.Arcot as a nonimee of the petitioner and the respondent was also directed to nominate its choice of arbitrator within a period of 30 days from the date of receipt of a copy of the order with a further direction that both the nominated arbitrators would appoint Presiding Officer within a period of 30 days from thereon. The above order was passed taking into consideration of the contract governing the parties. Despite the order of this Court directing the respondent to nominate its choice of arbitrator within a period of 30 days, the respondent has not nominated its choice of arbitrator, therefore the present petition is filed to appoint arbitrator on behalf of the respondent with a direction to appoint a Presiding Officer.

3. Though notice served on the respondent and name printed in the cause list, there is no representation on behalf of the respondent. Though the contract governing the parties provides three member of arbitrators each one nominated by the petitioner and the respondent respectively and both the nominated arbitrators would appoint the Presiding Officer. Despite direction of this Court, the respondent has not complied with the order. Therefore this court is of the view that with regard to the non supply of equipments as per the specification set out

in the tender and also taking into account that the respondent has raised the invoice for an amount of Rs.1,26,70,000/- including GST and consequently release of 90% of the amount by the petitioner, this Court is of the view that though the contract governing the parties provides for three member of Arbitrators tribunal, despite the petitioner's best efforts to have the three member Arbitrators Tribunal respondent is not cooperating. There is no impediment to have the Sole Arbitrator to adjudicate the matter. Accordingly Mrs. Pushya Sitaram, Senior Counsel, No.5, Subbaraya Avenue, Abhiramapuram, Chennai 600 018. Mobile No.90030 67997 is appointed as Sole arbitrator to enter upon the 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.

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

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Index: Yes/No
Internet : Yes/No
Speaking order/Non speaking order
dpq



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