

O.A.No.210 of 2020

M.SUNDAR, J.

Mr.Anirudh Krishnan and Mr.Adarsh Subramaniam, learned counsel for applicant and Mr.P.T.Ramkumar, learned Standing Counsel for Southern Railways (Respondent) are before this court in this web hearing on a video conferencing platform today.

2 With the consent of learned counsel for both sides, this application is being heard out and is being disposed of.

3 Instant application has been filed inter-alia under section 9 of 'The Arbitration and Conciliation Act, 1996 (26 of 1996)' ['hereinafter 'A and C Act' for brevity and clarity].

4 In the light of the trajectory the hearing has taken today, it may not be necessary to dilate on facts in great detail and it would suffice to say that nucleus of this application is a contract for 'MAS – GDR – Section – Replacement of steel girders Bridge - 167up' traceable to a e-tender dated 12.08.2016 and a 'Letter of Acceptance' ('LOA' for the sake

of brevity) dated 12.06.2017 followed by a contract described as 'contract agreement' dated 07.02.2018. There is also no disputation or disagreement that 'General Condition of Contract' ('GCC' for brevity) of Railways has been made applicable for this contract. Therefore, this LOA dated 12.06.2017, contract agreement dated 07.02.2018 and GCC shall collectively be referred to as 'said contract' for the sake of convenience and clarity.

5 This Court is informed that the value of said contract is about Rs.6.79 Crores and the time line within which work has to be completed is one year from the date of LOA and therefore, work ought to have been completed by 11.06.2018. There is no disputation that there were some extensions and the time line was extended upto 31.12.2019, but the disputation / disagreement is about the quantum of work done, pace at which it has been done and which of the contracting parties is responsible for extension, etc. Considering the limited scope of this application, this court refrains itself from embarking upon the exercise of setting out those details. To be noted, all these issues are left open to be decided by the Arbitral Tribunal about which there shall be elaboration infra.

6 Suffice to say that said contract ran into rough weather, respondent Southern Railways issued seven days notice inter-alia in accordance with clause 62 of GCC followed by what is referred to as 48 hours notice. Notwithstanding e-mails sent to Registry, this Court is informed without any dispute or disagreement that this 48 hours notice is dated 15.05.2020 and the same has been received by applicant on 20.05.2020.

7 Placing reliance on *State of Karnataka Vs. Shree Rameshwara Rice Mills* reported in (1987) 2 SCC 160 and *Tulsi Narayan Garg Vs. M.P.Road Development Authority* reported in 2019 SCC OnLine SC 1158, it is submitted that in the light of *Rameshwara Rice Mills* principle reiterated subsequently in *Tulsi Narayan Garg*, when there is unilateral authority for one party to terminate, only admitted amounts can either be ordered to be forfeited or appropriated. This court refrains itself from expressing any opinion on this issue as it would fall for consideration before Arbitral Tribunal about which there shall be mention infra. Be that as it may, learned counsel for applicant submitted that 48 hours notice now causes exposure to applicant's other contracts with Railways owing to clause 52-A of GCC.

8 What is of utmost relevance is arbitration agreement between parties being arbitration agreement within the meaning of section 2(1)(b) read with section 7 of A and C Act which is in the form of a clause in GCC and that clause is Clause 64. As there is no dispute about the existence of this arbitration agreement between parties, this court deems it unnecessary to extract and reproduce said clause in this order. The applicant has invoked this arbitration clause vide notice dated 23.03.2020 which has been received by respondent noticee on 05.05.2020. Therefore, the applicant has established manifest intention to arbitrate qua instant section 9 application. Respondent's counsel, on instructions, submits that this trigger notice has been received by respondent on 05.05.2020, but they have 60 days to respond by giving panel and that 60 days time would elapse only on 05.07.2020. Learned counsel for respondent submits that Railways would give the panel and the Arbitral Tribunal would be put in place within the time frame adumbrated in GCC. In other words, this means that the arbitration proceedings has commenced within the meaning of section 21 of A and C Act and that the constitution of Arbitral Tribunal is in the anvil.

9 Learned counsel for applicant, on instructions submits that the applicant would renew the bank guarantee qua said contract for a sum

of Rs.33,96,957/- (Rupees thirty three lakhs ninety six thousand nine hundred and fifty seven only) within four weeks from today and keep the same alive till the conclusion of arbitral proceedings. This submission is recorded.

10 In the light of the aforesaid undisputed obtaining position, this application is disposed of by making the following order:

(a)Arbitral Tribunal in accordance with clause 64 of GCC forming part of said contract shall be constituted within the time frame in GCC as submitted by learned counsel for respondent;

(b)Other contracts of applicant, i.e., contracts other than said contract, shall not be subjected to the risk under clause 52-A of GCC forming part of said contract owing to termination of instant contract;

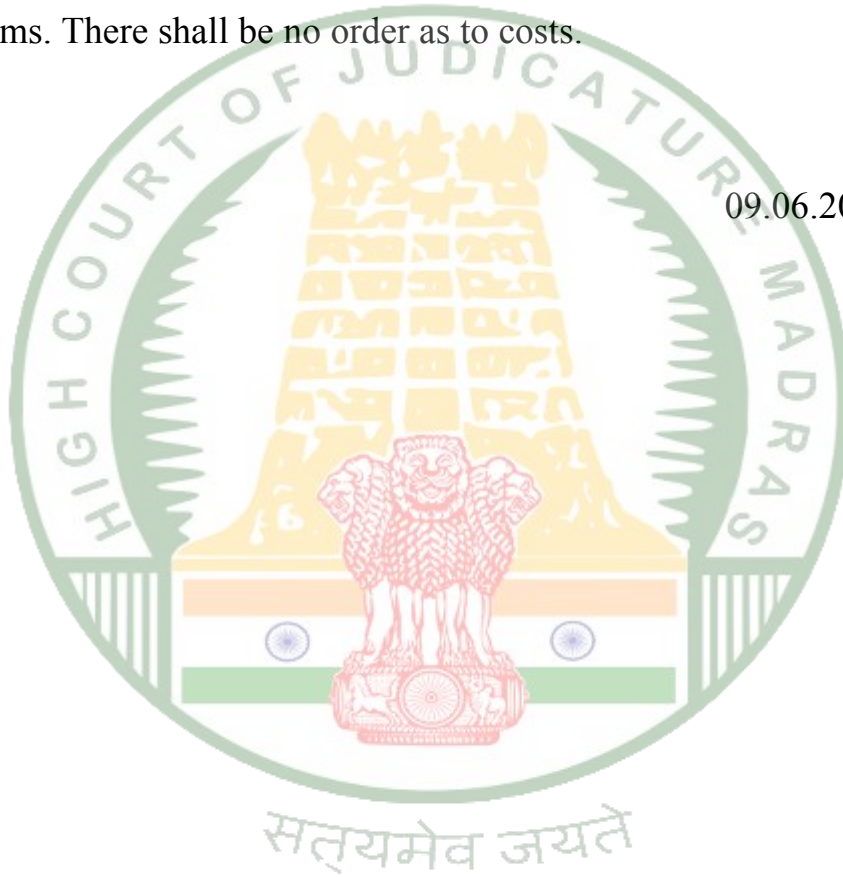
(c)Bank guarantee for a sum of Rs.33,96,957/- (Rupees thirty three lakhs ninety six thousand nine hundred and fifty seven only) qua said contract which the applicant has undertaken to be furnish within four weeks from today shall be renewed from time to time

(if necessary) and kept alive till conclusion of proceedings before Arbitral Tribunal.

11 Instant application, i.e., A.No.210 of 2020 is disposed of on above terms. There shall be no order as to costs.

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09.06.2020

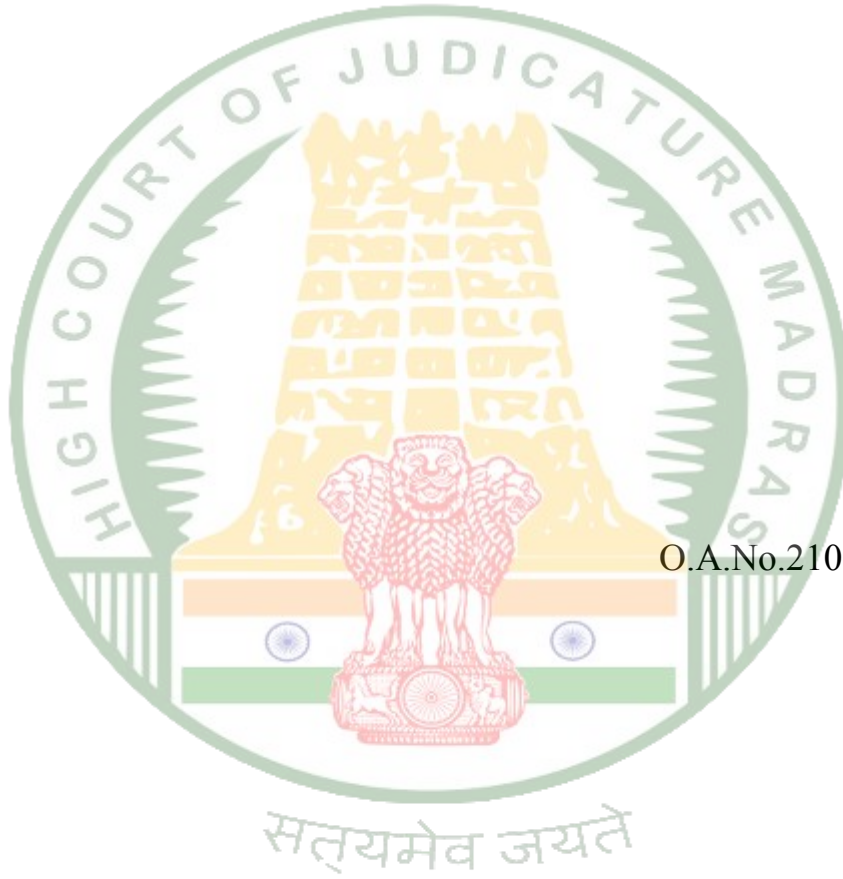


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