

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.01.2020

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THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.1071 of 2019

M/s.Fibroplast Marine Private Limited,
A duly incorporated Company under the
Companies Act, 1956
Registered office at Flat No.02,
Gabmar Apartment, Vasco Da Gama,
Goa - 403802
Represented by its Director and
Authorized Signatory Mr. Raghav Narula .. Petitioner

vs.

M/s.Ashok Leyland Limited,
A duly incorporated Company under the
Companies Act, 1956
Registered office at No.1, Sardar Patel Road
Guindy, Chennai - 600 032.
Represented by its Authorized Representative. .. Respondent

Original Petition filed under Section 15(2) read with section 11 (4) of the Arbitration and Conciliation Act, 1996 read with clause 2 of the appointment of arbitrator's by the Chief Justice of Madras High Court's Scheme, 1996, to:

a) appoint an Arbitrator on behalf of the Respondent, in order to fill in vacancy that arose on the demise of Late Ho'nble Justice (Retd.) Mr.N.V.Balasubramanian;

b) pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstance of the case and thus render justice.

For petitioner : Mr.S.Satish

For Respondent : Mr.V.Kuberan
for M/s.Rank Associates

ORDER

Mr.S.Satish, learned counsel on record for petitioner and Mr.V.Kuberan of Rank Associates (law firm) on behalf of sole respondent are before this Court.

2. Instant 'Original Petition' (hereinafter referred to as 'OP' for the sake of brevity) has been filed under section 15(2) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, clarity and convenience).

3. Instant OP is one essentially for substituting one of the three Hon'ble Arbitrators who constitute a three member Arbitral Tribunal qua arbitral disputes between the petitioner and the respondent.

4. As there is no dispute or contestation as between the parties, disposal of instant OP has become fairly simple. Therefore, it is also not necessary to dilate on facts.

5. Suffice to state that the three member Arbitral Tribunal was appointed by this Court in exercise of its powers under Section 11 of A and C Act, vide order dated 10.03.2017 made in O.P. No.58 of 2017. Though

obvious, for the purpose of clarity, it is made clear that two arbitrators were nominated and they in turn chose the presiding arbitrator.

6. Three member Arbitral Tribunal thus constituted is as follows:

Hon'ble Justice (Retd.) Mr.Vikas Sirpurkar, former Judge of the Hon'ble Supreme Court of India, Hon'ble Justice (Retd.) Mr.Dilip Rao Saheb and Hon'ble Justice (Retd.) Mr.N.V.Balasubramanian.

7. Unfortunate demise of one of the three Hon'ble Arbitrators namely, Mr.N.V.Balasubramanian on 03.11.2019 has necessitated the filing of instant OP. This Court is also informed that there is another legal aspect which has necessitated the filing of instant OP. That legal aspect is the principle laid down by the Hon'ble Calcutta High Court in ***Ramjee Power Constructions Limited Vs. Damodar Valley Corporation reported in MANU/WB/1306/2009***. Ramjee power constructions principle is to the effect that once an application under Section 11 of A and C Act is made, the right of the other party to appoint the Arbitrator in accordance with the A and C Act gets extinguished and it does not revive if the arbitrator or one of the arbitrators is either unable to continue or when his mandate is terminated. In view of there being no dispute or contestation between the parties as alluded to supra, it is not necessary to dilate any further on this aspect of the matter.

8. With regard to substituting the aforementioned Hon'ble Arbitrator who is no more, name of Hon'ble Mrs.Justice Chitra Venkataraman (Retd.), Former Judge of this Court was suggested by the respondent counsel and the petitioner counsel on instructions submitted that the suggestion is not opposed.

9. Therefore, Hon'ble Mrs.Justice Chitra Venkataraman (Retd.) Former Judge of this Court is appointed as Arbitrator who will substitute Late Hon'ble Justice Mr.N.V.Balasubramanian (Retd.) qua the Arbitral Tribunal appointed vide order dated 10.03.2017 made in O.P. No.58 of 2017.

10. The three member Arbitral Tribunal now reconstituted vide this substitution order is requested to embark upon the exercise of continuing and concluding the Arbitral proceedings by passing an award in accordance with the A and C Act. This petition is thus disposed of. There shall be no order as to costs.

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Speaking Order/Non-Speaking Order

Index : Yes/No

Internet: Yes/No

Note:

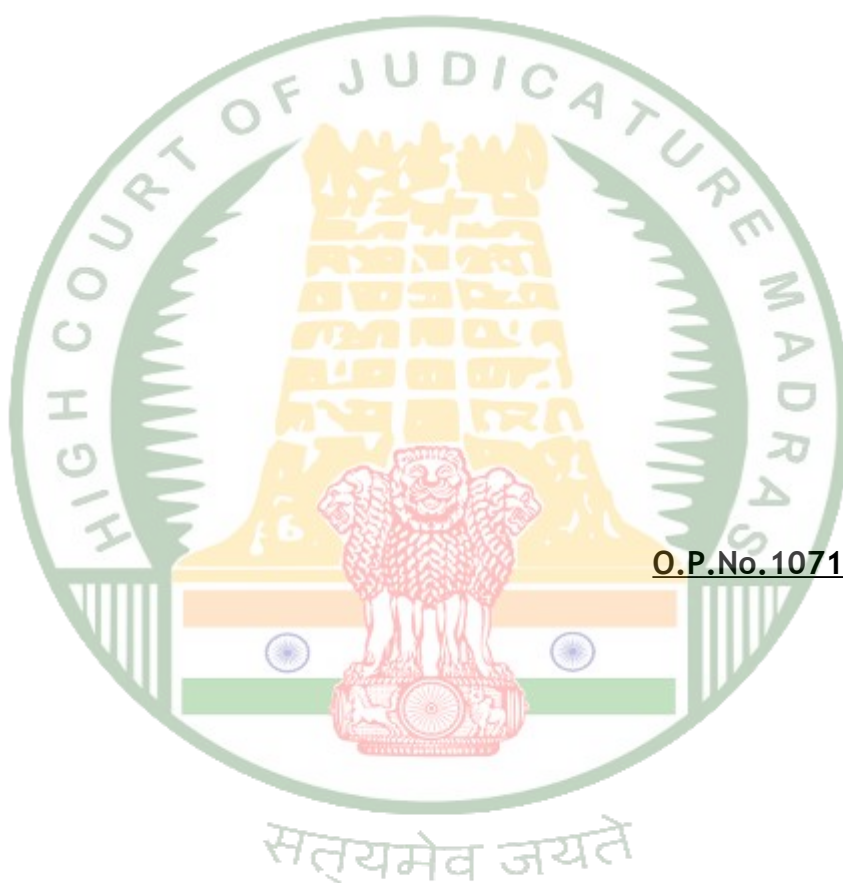
Registry is directed to communicate this order to
The Hon'ble Justice (Retd.) Mrs. Chitra Venkataraman,
New No.31, Old No.17-B,
IV main road, Raja Annamalaipuram,
Chennai - 600 0028.



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M.SUNDAR,J.

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