

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No. 392 of 2021 and
A.No.1905 of 2021

M/s Resistoflex Dynamics Pvt. Ltd.
through authorised signatory,
having its registered office at Plot No.27-28,
Udyog Vihar, Greater Noida 201306,
Uttar Pradesh

... Petitioner

Vs.

1. M/s Controller of Stores,
Integral Coach Factory, having
its office at Integral Coach Factory,
Chennai 600 038.
2. Mr. Y.P.Reddy, CMM/Elec,
Integral Coach Factory,
Chennai 600 038.
3. General Manager, Integral Coach Factory,
Chennai 600 038.

..... Respondents

PRAYER : Original Petition filed under Section 14 of the Arbitration and Conciliation Act, 1996 challenging the appointment of the Mr.Y.P.Reddy, CMM/ELECT, Integral Coach Factory as the Arbitrator appointed by the General Manager, Integral Coach Factory vide letter

dated 10.03.2021 and consequently for substitution of an independent Arbitrator under Sections 11 and 15 of the Arbitration and Conciliation Act,1996.

For petitioner : Mr.T.M.Hariharan

For respondents : Mrs. A.Srijevani

ORDER

This original petition has been filed challenging the appointment of Mr.Y.P.Reddy, CMM/ELECT, Integral Coach Factory as the Arbitrator, appointed by the General Manager, Integral Coach Factory vide letter dated 10.03.2021 and consequently for substitution of an independent Arbitrator under Sections 11 and 15 of the Arbitration and Conciliation Act,1996.

2. The contention of the petitioner is that specific requests have been made by the petitioner to the third respondent for appointment of an independent Arbitrator, in accordance with Section 12(5) of the Arbitration and Conciliation Act. But the requests of the petitioner were rejected by the third respondent. Further, in violation of Section 12(5) of the Act, the third respondent had appointed the second respondent as

an Arbitrator vide letter dated 10.03.2021. Pursuant to the above appointment, the second respondent vide letter dated 24.03.2021, directed the petitioner to submit a self-contained statement of facts, claims. According to the petitioner, the continuation of the proceedings of the second respondent is in violation of Section 12(5) of the Act. Hence, the petitioner prayed to appoint an independent Arbitrator to enter upon the reference and adjudicate the same.

3. It is contended by the respondents that, the conditions of GCC (General Condition of Contract) and IRS are part of the contract agreement and the ICF is constrained to follow the same. The further contention of the respondents is that the appointment of Arbitrator under Section 12(5) of the Arbitration and Conciliation Act, is not applicable to the present case and hence, the petition is liable to be dismissed.

4. Pursuant to the direction of this court, the learned counsel for the respondents submitted the Panel of External Arbitrators in ICF, as on 27.09.2021.

5. As per the conditions of the GCC (General Condition of Contract) and IRS, choice is given to the applicant to select any one of the Arbitrators in ICF. Accordingly, from the above Panel of External Arbitrators, the petitioner selected Mr.S.K.Sood Rtd. GM/CR, Flat No.C/013, Belvedere Park, DLF Phase-3, Gurgaon-122002, Sood73sk@gmail.com 09004411110. Further, it is stated by the learned counsel for the petitioner that the petitioner is at Delhi and hence, the Arbitrator may be directed to fix the Venue at Delhi.

6. It is to be noted that the Arbitrator is having discretionary power to choose the venue, taking note of the convenience of the parties. Therefore, fixing of Venue is left to the Arbitrator, after considering the convenience of both the parties.

7. Accordingly, it is ordered as follows.

- i) That Mr. S.K.Sood Rtd. GM/CR, Flat No.C/013, Belvedere Park, DLF Phase-3, Gurgaon-122002, Sood73sk@gmail.com 09004411110, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall 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.

iii] That **the fees of Arbitrator and other incidental charges shall be fixed, as per the Schedule of the Arbitration and Conciliation Act** and the same shall be borne by the parties equally.

8. This Original petition is ordered accordingly, leaving the parties to bear their own costs.

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Index : Yes / No
Internet: Yes
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