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Arb..O.P(Com.Div). Nos.267 and 298 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P(Com.Div).Nos.267 and 298 of 2022

M/s.Oriental Veneer Products Limited,
Represented by its Regional Manager,
Mr.S.Muthukumar,
Survey No.49, Village Aghai,
Taluka-Shahpur, Thane
Maharashtra – 421 301

... Petitioner in both Arb.O.Ps

Vs.

1.Union of India,
Represented by its General Manager,
Integral Coach Factory,
Chennai.

2.The Deputy Material Manager,
Integral Coach Factory,
Chennai.

... Respondents in both Arb.O.Ps

Prayer in Arb.O.P.(Com.Div.)No.267 of 2022: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole arbitrator to adjudicate all the disputes between the parties arising from Purchase Order dated 03.05.2018 bearing P.O.No.07/18/1051/1753/F issued by respondent No.2 on behalf of respondent No.1 and pass a final award with respect to the aforesaid disputes.



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Prayer in Arb.O.P.(Com.Div.)No.298 of 2022: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole arbitrator to adjudicate all the disputes between the parties arising from Purchase Order dated 03.05.2018 bearing P.O.No.07/18/1051/1753/F issued by respondent No.2 on behalf of respondent No.1 and pass a final award with respect to the aforesaid disputes.

For Petitioner (in both Arb.OPs)	: Mr.K.Ashok Kumar
For Respondents (in both Arb.OPs)	: Mr.S.Janarthanam SPCGC

COMMON ORDER

By this common order, these two Arbitration Original Petitions are disposed of.

2. The petitioner in both petitions are the same person who is the contractor of the Integral Coach Factory/respondents herein for supply of seats and berths. It appears that there was a delay in supply and therefore the respondent/Integral Coach Factory has deducted an amount towards liquidation charges under the contract that was awarded to the petitioner in these two petitions. The dispute between the petitioner and the respondent is arbitrable. Relevant Clause in both the petitions in IRS Standard Conditions of contract



reads as under:-

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“(a)In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.

(b)In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.”

3. In Arb.O.P.(Com.Div.)No.267 of 2022, the petitioner had earlier approached this Court in O.P.No.315 of 2021 after a notice seeking for appointment of an Arbitrator was issued on 13.03.2021. The said Original Petition was dismissed as withdrawn with liberty to the petitioner to issue fresh Notice under Section 21 of the Arbitration and Conciliation Act, 1996.



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Accordingly, the petitioner had issued a notice dated 17.01.2022, inresponse to which the respondent had sent a letter/communication dated 29.01.2022 by informing the petitioner that the request/demand for invoking the arbitration Clause was under consideration and arbitrator will be appointed by the General Manager of ICF as per Clause 2900 of IRS conditions of contract.

4. After Arb.O.P.(Com.Div)No.267 of 2022 was filed, the respondent has filed a typed set. In the typed set, the respondent has filed a copy of a communication dated 10.06.2022. The respondent has given the names of the following four persons from its panel:

- 1.Shri.Aditya Sharma/IRSS/Rtd.PCMM/CR
- 2.Shri.T.Venkatasubramanian IRSME/Rtd.PCME/SR.
- 3.Shri.Neeraj Jain IRSE/Rtd./CTE/ECR/Hajpur.
- 4.Shri.Kamal Dev.Rath IRSE/Rtd.PCE/ECR.”

These persons are the retired employees of the Railways and their name is in the panel of Arbitrators maintained by the respondent. The said communication dated 10.06.2022 reads as under:-

“This has reference to the above, we hereby enlisted four retired Railway Officers to work as Railway Arbitrators nominated by GM as per IRS conditions clause 2905(b)(ii). Out of four you have to select two Arbitrators from the list in order to initiate arbitration proceedings for your claims.



5. The names suggested by the respondent by their communication dated 10.06.2022 is contrary to the Arbitration Clause in IRS conditions clause 2905(b)(ii). It contemplates appointment of a serving employee of the respondent by the General Manager, whereas, the names suggested in the aforesaid communication dated 10.06.2022 are retired employees of the Indian Railways. Thus, the offer in communication dated 10.06.2022 is clearly contrary to the contract between the petitioner and the respondent. Therefore, the name of person suggested in communication dated 10.06.2022 cannot be considered for appointment as Arbitrator.

6. In so far as Arb.O.P.(Com.Div)No.298 of 2022 is concerned, a similar representations was earlier given by the respondent stating that the request(demand) for invoking the arbitration Clause was under consideration and arbitrator will be appointed by General Manager of ICF as per Clause 2900 of IRS conditions of contract. No further names have been suggested by the respondent.

7. In Arb.O.P.(Com.Div.)No.298 of 2022, the respondents have forfeited their right to appoint an Arbitrator as they did not come forward with the names from panel Arbitrator. Therefore, this Court has jurisdiction to appoint an



Arbitrator.

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8. Considering the above, Court is inclined to appoint the following persons:

(i) In Arb.O.P.(Com.Div.)No.267 of 2022, Ms.S.Manjula, Advocate (E.No.383/1977) Chamber No.333, II Phase, II Floor, New Additional Law Chambers, High Court, Chennai, (Mobile No.7904463015), as an Arbitrator to enter appearance in the respective cases and decide the case independently.

(ii) In Arb.O.P.(Com.Div.)No.298 of 2022, Ms.Shirijha, Advocate, No.2/669 A, River View Colony, 1st Main Road, Manapakkam, Chennai, (Mobile No.9940195896), as an Arbitrator to enter appearance in the respective case and decide the case independently.

(iii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the



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Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iv) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

9. These Original Petitions are disposed of accordingly, leaving the parties to bear their own costs.

10. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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