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Arb.O.P(Com.Div.)No.216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.216 of 2023

M/s.Unique Builders
Represented by its Partner
N.Sreenivasan,
Also having
Registered Office at
No.36, D.N.Plaza, 2nd Floor,
Thiruvalluvar Salai,
Thiruvalluvar Nagar,
Mugappair East, Chennai - 600 037.

... Petitioner

Vs.

1.The Union of India,
Represented by
The General Manager,
Southern Railway, Head Quarters,
Park Town, Chennai - 600 003.

2.The Deputy Chief Engineer/GS/MAS,
Southern Railways, Chennai Division,
Park Town, Chennai - 600 003.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2019, praying to appoint an independent and impartial arbitrator to adjudicate the dispute between the petitioner and the respondents



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in terms of the Contract Agreement No.215/CTR/MAS dated 14.09.2015 as set out under details of claims in Para No.5 above and to direct the respondents to pay the cost of this petition.

For Petitioner : Ms.K.Aparna Devi
For Respondents : Mr.A.R.L.Sundaresan
Additional Solicitor General (ASG)
Assisted by Ms.S.P.Arthi
Senior Panel Counsel (SPC)

ORDER

The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2019, for appointing an Arbitrator in terms of a Contract Agreement entered into between the parties on 14.09.2015.

2. The dispute between the petitioner and the respondents is arbitrable in terms of Clause 64(3)(a)(ii) of the aforesaid Contract Agreement. It reads as under:-

"64.(3) : Appointment of Arbitrator

64.(3)(a)(ii) : In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days



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from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator."

3. The petitioner has invoked the arbitration clause as early as 19.02.2023 by serving a notice on the respondents through registered post with acknowledgment. The notice was also received by the respondents on 22.04.2023.

4. By a communication dated 28.02.2023, the respondents have informed the petitioner as to whether the petitioner was interested in conducting the arbitral proceedings as laid down in Clause 64(1) of the General Conditions of Contract (GCC).



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5. Therefore, the petitioner has responded on 04.03.2023 and has alluded to Section 12(5) of the Arbitration and Conciliation Act, 1996 and therefore the petitioner has not accepted for waiver. The respondents have not responded positively by suggesting the names as per the above clause.

6. Considering the above, it has to be construed that that the respondents have forfeited their rights to appoint an Arbitrator in terms of the aforesaid Contract Agreement dated 14.09.2015 and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

7. Since the dispute between the parties are arbitrable, this Court is inclined to appoint **Hon'ble Mrs.Justice Chitra Venkataraman (Retd.), Former Judge of Madras High Court residing at Old No.17-B, New No.31, IV Main Road, Raja Annamalaipuram, Chennai - 600 028, (Mobile No.98409 90000),** as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.



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

9. 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 remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

10. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



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C.SARAVANAN, J.

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11. 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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