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Arb.O.P(Com.Div.)No.359 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.359 of 2023

M/s.RPN Engineers Chennai Private Limited,
Represented by its Managing Director
P.K.Luqman Basha,
M-60, 9th Street, Anna Nagar East,
Chennai - 600 102.

... 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/CN/III,
Construction, Madurai Southern Railway,
Arasaradi, Madurai - 625 016.

... 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 sole arbitrator to adjudicate the dispute between the petitioner and the respondents in terms of the Contract Agreement No.67/DY.CE/CN/III/MDU/2021 dated 23.03.2021 as set out under details of claims in Para No.5 above and to direct the respondents to pay the cost of this petition.



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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 23.03.2021.

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

"64.(3) : Appointment of Arbitrator

64.(3)(b) : Appointment of Arbitrator where applicability of Section 12(5) of Arbitration and Conciliation Act has not been waived off:

(ii) In cases where the total value of all claims in question added together Rs.50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the Contractor within 60 days 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



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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 has served in the Accounts Department."

3. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 29.05.2023, which has been duly received by the respondents on 30.05.2023 and responded on 31.05.2023.

4. By the aforesaid response dated 31.05.2023, the respondents have merely stated that a decision will be taken on the request of the petitioner following the statutory period mentioned in the General Conditions of Contract (GCC)/applicable conditions of contract and the same will be communicated to the petitioner.

5. This Arbitration Petition has been filed by the petitioner on 31.07.2023 after waiting for the expiry of the period prescribed under Clause 64(3)(b)(ii) of the aforesaid Contract Agreement dated 23.03.2021.



6. Considering the same, it has to be construed that the respondents have forfeited their rights to appoint an Arbitrator in terms of the aforesaid Contract Agreement dated 23.03.2021 and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Under these circumstances, this Court is inclined to appoint **Hon'ble Mr.Justice G.Chockalingam (Retd.), Former Judge of Madras High Court residing at Sri Krishna, Plot Nos.18 and 19, Bharathiyar Road, Vallalar Nagar, Nandivaram, Guduvancherry, Annai Anjugam Nagar Post, Chengalpattu Taluk, Kancheepuram District - 603 211**, as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

7. 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.



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8. 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.

9. This Original Petition is allowed 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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C.SARAVANAN, J.



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