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Arb.O.P. (Com.Div.) No.414 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.414 of 2023

Tawakkal Wood Products Private Limited,
Represented by its Regional Manager,
Mr.S.Muthukumar,
Survey No.47,
VillageAghai,
Taluka Shahpur,
District - Thane – 421 301
and at
3B, 3rd Floor, Flint Fortress AG 42,
3rd Street, Shanthi Colony,
Annanagar,
Chennai – 600 040.

.. Petitioner

Vs.

Principal Chief Materials Manager,
Administrative Building, ICF Area,
Integral Coach Factory,
Dr.Ambedkar Road,
Chennai – 600 038.

.. Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator as per Section 11(5) read with Section 10(2) of the Arbitration and Conciliation Act, 1996 pursuant to clause 2900 of the IRS conditions of contract entered into between the Applicant and the Respondent.



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For Petitioner : Mr.K.Ashok Kumar

For Respondent : Mr.S.Janarthanam
SPCGC

ORDER

This application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. The petitioner appears to have been awarded a contract for supply of seats and berths to the respondent Railways. It appears there is a dispute regarding the payments for the supplies effected by the petitioner including the GST components in view of the change in the rate of tax from 12 to 18%.

3. The petitioner had issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 11.10.2022. The respondent responded to the above notice vide communication dated 21.11.2022, wherein, the petitioner was informed that the pre-arbitration meeting with CA and legal representative of the firm was re-scheduled to 23.11.2022 at 15.00 hrs and the meeting will be conducted in the chamber of



Dy.FA&CAO/S at ICF Shell Administrative Building. It is submitted that till date, the arbitrator has not been nominated.

4. The learned counsel for the respondent on the other hand would submit that pre-arbitration proceedings have not been concluded and therefore petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 was pre-mature.

5. The learned counsel for the respondent would submit that Committee members pointed out that the petitioner has not yet submitted CA Certificate for scrutiny to consider refund of the amount and has requested the petitioner to submit CA certificate along with other relevant documents on or before 15.12.2022. However, till date, the petitioner has not furnished CA certificate, balance sheet, Stock Statement and other relevant particulars from GST portal to prove that the petitioner has borne incidence of tax on the supplies.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. The dispute between the petitioner and the respondent is arbitrable.



Clause 2900 of the Indian Railways Standard Conditions of Contract

(IRS Conditions of Contract) reads as under:

“(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.”

7. The petitioner has moved this petition on 04.08.2023 after waiting for a substantially long period. Even today, the respondent has not come forward with any suggestions to resolve the dispute one way or other under the mechanism prescribed under the contract between the petitioner and the respondent.



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8. The initiation of arbitration proceedings cannot be kept pending further compliance either by the petitioner and the respondent. Once a dispute can arise, it is incumbent on the part of the respondent to appoint an arbitrator in accordance with Clause 2900 of the Indian Railways Standard Conditions of Contract (IRS Conditions of Contract).

9. The respondent has forfeited the rights under the aforesaid Clause as the respondent has not nominated an arbitrator under Clause 2900 of the Indian Railways Standard Conditions of Contract (IRS Conditions of Contract). Considering the same, Court is inclined to appoint **Hon'ble Ms.Justice S.Kannammal, Retired Judge of this Court**, as an Arbitrator to resolve the dispute between the parties.

10. The parties are at liberty to workout the venue for Arbitration at Chennai.

11. The Court is inclined to pass the following order:-

(i) **Hon'ble Ms.Justice S.Kannammal, Retired Judge of this Court, (Mobile No.:9003977452) residing at Flat No.16, 4th Floor,**



Casagrande Aldea, Bharathiyar Nagar, Okkiyam, Thoraipakkam,

Chennai, is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

(ii) 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.

(iii) 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 respondent remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from



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the respondent.

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12. This Original Petition is allowed with the above observations, leaving the parties to bear their own costs.

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

16.11.2023

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Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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